

The Burger Court Opinion Writing Database

South Dakota v. Neville

459 U.S. 553 (1983)

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

February 4, 1983

Re: No. 81-1453 - South Dakota v. Neville

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1983

RE: No. 81-1453 South Dakota v. Neville

Dear Sandra:

I agree.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 9, 1983

Re: 81-1453 -

South Dakota v. Neville

Dear Sandra,

Please join me. --

Sincerely yours,

Byron

Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1983

Re: No. 81-1453 -- South Dakota
v. Neville

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor
Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1983

Re: 81-1453-South Dakota v. Neville

Dear John:

Please join me in your dissent.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

HAB

January 25, 1983

Re: No. 81-1453 - South Dakota v. Neville

Dear Sandra:

As a personal favor to me, would you add to your list of cases cited in the first paragraph of part II on page 4 the following: "Perez v. Campbell, 402 U.S. 637, 657 and 672 (1971) (concurring opinion)," with such description as you might choose? I feel very strongly about highway carnage, and three others joined me in that separate opinion. I think it is in line with your paragraph and might add even a little more punch to it.

Sincerely,

HAB

Justice O'Connor

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 25, 1983

Re: No. 81-1453 - South Dakota v. Neville

Dear Sandra:

Please join me.

Would you consider adding as a footnote, dropped at the end of the first sentence of the first paragraph beginning on page 9, something like the following:

"Nothing in the record suggests that respondent is 'one of the few' who object to extraction on religious grounds or harbor extraordinary fear of the procedure. See 384 U.S., at 771, 765, n. 9."

I offer this just for your consideration.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 24, 1983

81-1453 South Dakota v. Neville

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

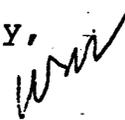
January 31, 1983

Re: No. 81-1453 South Dakota v. Neville

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: FEB 9 '83

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JPS
Please join me in
dissent

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1453

**SOUTH DAKOTA, PETITIONER v.
MASON HENRY NEVILLE**

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH DAKOTA

[February —, 1983]

JUSTICE STEVENS, dissenting.

The Court is understandably anxious to do its part in cur-
tailing the "carnage caused by drunk drivers." *Ante*, at 4.
I sympathize with that concern, but it does not justify the
rendition of an advisory opinion on a constitutional issue. In
this case, the Court has no power to reverse the judgment of
the South Dakota Supreme Court, because its decision rests
on an adequate and independent state ground. I therefore
cannot join the Court's opinion.

The South Dakota Supreme Court framed the question be-
fore it on appeal as "whether SDCL 32-23-10.1 is a violation
of Neville's federal and state constitutional privilege against
self-incrimination. U. S. Const. Amend. V; S.D. Const. art.
VI, § 9." 312 N. W. 2d 723, 725 (S.D. 1981). After analyz-
ing both federal and state cases, the South Dakota Supreme
Court concluded:

"We hold that evidence of the accused's refusal to take a
blood test violates the federal and state privilege against
self-incrimination and therefore SDCL 32-23-10.1 is un-
constitutional." *Id.*, at 726.

Thus, the South Dakota Supreme Court unambiguously held
that the statute violated the State Constitution. That hold-
ing is certainly adequate to support its judgment and is be-

Join

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77. 1-3,5
(only new citations)

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1453

SOUTH DAKOTA, PETITIONER *v.*
MASON HENRY NEVILLE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH DAKOTA

[February —, 1983]

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins,
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2.3

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1453

**SOUTH DAKOTA, PETITIONER v.
MASON HENRY NEVILLE**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH DAKOTA**

[February —, 1983]

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

From: **Justice O'Connor**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1453

**SOUTH DAKOTA, PETITIONER v.
MASON HENRY NEVILLE**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH DAKOTA**

[January —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

Schmerber v. California, 384 U. S. 757 (1966), held that a State could force a defendant to submit to a blood-alcohol test without violating the defendant's Fifth Amendment right against self-incrimination. We now address a question left open in *Schmerber, id.*, at 765, n. 9, and hold that the admission into evidence of a defendant's refusal to submit to such a test likewise does not offend the right against self-incrimination.

I

Two Madison, South Dakota police officers stopped respondent's car after they saw him fail to stop at a stop sign. The officers asked respondent for his driver's license and asked him to get out of the car. As he left the car, respondent staggered and fell against the car to support himself. The officers smelled alcohol on his breath. Respondent did not have a driver's license, and informed the officers that it was revoked after a previous driving-while-intoxicated conviction. The officers asked respondent to touch his finger to his nose and to walk a straight line. When respondent failed these field sobriety tests, he was placed under arrest and read his *Miranda* rights.¹ Respondent acknowledged that

¹The officer read the *Miranda* warning from a printed card. He read:

DIG

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

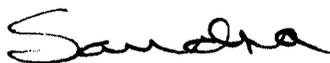
January 25, 1983

No. 81-1453 South Dakota v. Neville

Dear Harry,

I will be delighted to cite your concurring opinion in Perez v. Campbell, 402 U.S. 637, for the interesting use of statistics on highway safety. It will be in the next circulation.

Sincerely,



Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

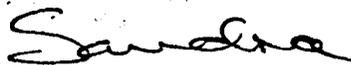
January 25, 1983

No. 81-1453 South Dakota v. Neville

Dear Harry,

I will incorporate in the next circulation a footnote indicating that nothing in the record suggests that respondent made any claim of objection based on religious grounds or the use of extraordinary procedures.

Sincerely,



Justice Blackmun

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PP. 4, 9, 11, 12

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

From: Justice O'Connor

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1453

SOUTH DAKOTA, PETITIONER *v.*
MASON HENRY NEVILLE

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3-5
for remembered

To: The Chief Justice
Justice Brennan
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Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1453

**SOUTH DAKOTA, PETITIONER v.
MASON HENRY NEVILLE**

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 23, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for No. 81-1453, South Dakota v. Neville
No. 82-5182, Lyons v. California

In this case, an officer stopped petitioner after observing his car move in a jerky fashion. The officer smelled alcohol on petitioner's breath, and requested that petitioner take one of three blood-alcohol tests. When petitioner refused, he was arrested for driving while intoxicated. At trial, evidence of his refusal was introduced against petitioner, over his objections. The trial court denied petitioner's post-trial motions that alleged the California statute authorizing the introduction of this evidence violated the federal constitution. The California Superior Court, Appellate Department, affirmed his conviction without opinion, and denied his motion for certification to the California Court of Appeal. In his petition for certiorari, petitioner again argues that evidence of refusal violates the Fifth Amendment privilege against self-incrimination.

The introduction of evidence of refusal to take a blood-alcohol test is consistent with our opinion in South Dakota v. Neville, No. 81-1453. I recommend the petition be denied.

Sincerely,

Sandra D. O'Connor

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