The Burger Court Opinion Writing Database

McDonough Power Equipment, Inc. v. Greenwood

464 U.S. 548 (1984)

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

January 12, 1984

Re: 82-958 McDonough Power Equip., Inc. v. Greenwood

Dear Bill:

I join.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 5, 1984

Re: McDonough Power Equipment v. Greenwood, No. 82-958

Dear Bill:

Like John, my recollection of the Conference consensus differs from that contained in your draft opinion. As I understood the discussion, there were two main points agreed to at Conference. First, the proper focus during a motion for new trial should be the probable bias of the juror and the resulting prejudice to the litigant. Moreover, because probable bias of the juror will rarely be admitted by the juror himself, it necessarily must be inferred from the surrounding facts and circumstances. Whether the juror answered the voir dire question honestly or dishonestly, and whether a dishonest answer was inadvertent or intentional, are simply factors to be considered in a determination of probable bias. The requirements of your last sentence on page 7 would foreclose a finding of juror bias unless the juror himself admitted intentional deception motivated by animus toward the litigant, a standard that would have little, if any, practical application.

Second, given such a legal standard, the Court of Appeals clearly erred by deciding the issue itself rather than remanding the issue to the district court for a hearing and decision in the first instance. As your note 3 recognizes, "[a]ppellate tribunals are poor substitutes for trial courts for developing a record or resolving factual controversies." I read the next to last sentence of your opinion to remand the issue for further hearing. But at the same time note 3 seems to suggest that the Court is reaching the "merits" of this issue. I assume you mean to indicate that the Court will not hesitate to correct the erroneous legal standard adopted by the Court of Appeals. If so, I would be much happier if note 3 could be so clarified.

Sincerely,

WJB, Jr.

Justice Rehnquist
Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 9, 1984

Re: McDonough Power Equipment v. Greenwood, No. 82-958

Dear Bill:

I have decided to write separately in this case, concurring in the judgment. My short statement has been sent to the printer and should be circulated this afternoon.

Sincerely,

WJB, Jr.

Justice Rehnquist

Copies to the Conference

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

From: **Justice Brennan**

Circulated: 1/3/84

Recirculated: _____

WJB
Please join me
in your Concurrence
TM

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-958

McDONOUGH POWER EQUIPMENT, INC., PETITIONER *v.* BILLY G. GREENWOOD ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January ——, 1984]

JUSTICE BRENNAN, concurring in the judgment.

I agree with the Court that the Court of Appeals employed an erroneous legal standard to determine whether a new trial was required in this case, and that the Court of Appeals compounded that error by failing to remand the case to the District Court for a hearing and decision on the motion for new trial in the first instance. I concur only in the judgment, however, because I have difficulty understanding the import of the legal standard adopted by the Court.

The Court of Appeals ordered a new trial because Ronald Payton, who later was chosen as jury foreman, incorrectly answered an important question posed to prospective jurors on *voir dire*. Specifically, although asked whether any family members had "sustained any injuries . . . that resulted in any disability or prolonged pain or suffering," Payton failed to disclose a previous injury his son had incurred in a truck-tire explosion. The court concluded that, because the information available to counsel during *voir dire* was erroneous, the juror's response "prejudiced the Greenwoods' right of peremptory challenge." *Greenwood* v. *McDonough Power Equipment, Inc.*, 687 F. 2d 338, 342 (CA10 1982). It therefore held that the Greenwoods' motion for a new trial should have been granted, and entered judgment granting the motion.

changes marked

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 1/13/84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–958

McDONOUGH POWER EQUIPMENT, INC., PETITIONER *v.* BILLY G. GREENWOOD ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January ——, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring in the judgment.

I agree with the Court that the Court of Appeals employed an erroneous legal standard to determine whether a new trial was required in this case, and that the Court of Appeals compounded that error by failing to remand the case to the District Court for a hearing and decision on the motion for new trial in the first instance. I concur only in the judgment, however, because I have difficulty understanding the import of the legal standard adopted by the Court.

The Court of Appeals ordered a new trial because Ronald Payton, who later was chosen as jury foreman, incorrectly answered an important question posed to prospective jurors on *voir dire*. Specifically, although asked whether any family members had "sustained any injuries . . . that resulted in any disability or prolonged pain or suffering," Payton failed to disclose a previous injury his son had incurred in a truck-tire explosion. The court concluded that, because the information available to counsel during *voir dire* was erroneous, Payton's failure to respond "prejudiced the Greenwoods' right of peremptory challenge." *Greenwood* v. *McDonough Power Equipment, Inc.*, 687 F. 2d 338, 342 (CA10 1982). It therefore held that the Greenwoods' motion for a new trial should have been granted, and entered judgment granting the motion.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 6, 1984

Re: 82-958 -
McDonough Power Equipment, Inc. v. Greenwood

Dear Bill,

Please join me in your second draft.

Sincerely,

Byron

Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 10, 1984

Re: No. 82-958-McDonough v. Greenwood

Dear Bill:

Please join me in your concurrence.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 11, 1984

Re: No. 82-958, McDonough Power Equipment, Inc. v. Greenwood

Dear Bill:

I join your opinion, but I am adding a few words of my own.

Sincerely,

H.A.B.

Justice Rehnquist

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JAN 1 1 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-958

McDONOUGH POWER EQUIPMENT, INC., PETITIONER *v.* BILLY G. GREENWOOD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January ——, 1984]

JUSTICE BLACKMUN, concurring.

I agree with the Court that the proper inquiry in this case is whether the defendant had the benefit of an impartial trier of fact. I also agree that in most cases, the honesty or dishonesty of a juror's response is the best initial indicator of whether the juror in fact was impartial. I therefore join the Court's opinion, but I write separately to state that I understand the Court's holding not to foreclose the normal avenue of relief available to a party who is asserting that he did not have the benefit of an impartial jury. Thus, regardless of whether a juror's answer is honest or dishonest, it remains within a trial court's option, in determining whether a jury was biased, to order a post-trial hearing at which the movant has the opportunity to demonstrate actual bias or, in exceptional circumstances, that the facts are such that bias is to be inferred. See *Smith* v. *Phillips*, 455 U. S. 209, 215–216 (1982); *id.*, at 221–224 (O'CONNOR, J., concurring).

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-958

McDONOUGH POWER EQUIPMENT, INC., PETITIONER *v.* BILLY G. GREENWOOD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January ——, 1984]

JUSTICE BLACKMUN, with whom JUSTICE O'CONNOR and JUSTICE STEVENS join, concurring.

I agree with the Court that the proper inquiry in this case is whether the defendant had the benefit of an impartial trier of fact. I also agree that, in most cases, the honesty or dishonesty of a juror's response is the best initial indicator of whether the juror in fact was impartial. I therefore join the Court's opinion, but I write separately to state that I understand the Court's holding not to foreclose the normal avenue of relief available to a party who is asserting that he did not have the benefit of an impartial jury. Thus, regardless of whether a juror's answer is honest or dishonest, it remains within a trial court's option, in determining whether a jury was biased, to order a post-trial hearing at which the movant has the opportunity to demonstrate actual bias or, in exceptional circumstances, that the facts are such that bias is to be inferred. See *Smith* v. *Phillips*, 455 U. S. 209, 215–216 (1982); *id.*, at 221–224 (O'CONNOR, J., concurring).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1984

82-958 McDonough Power Equipment v. Greenwood

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: JAN 4 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-958

McDONOUGH POWER EQUIPMENT, INC., PETITIONER *v.* BILLY G. GREENWOOD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January ——, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents, Billy Greenwood and his parents, sued petitioner McDonough Power Equipment, Incorporated to recover damages sustained by Billy when his feet came in contact with the blades of a riding lawn mower manufactured by petitioner. The United States District Court for the District of Kansas entered judgment for petitioner upon a jury verdict and denied respondents' motion for new trial. On appeal, however, the Court of Appeals for the Tenth Circuit reversed the judgment of the District Court and ordered a new trial. It held that the failure of a juror to respond affirmatively to a question on *voir dire* seeking to elicit information about previous injuries to members of the juror's immediate family had "prejudiced the Greenwoods' right of peremptory challenge," *Greenwood* v. *McDonough Power Equipment, Inc.*, 687 F. 2d 338, 342 (CA10 1982), and that a new trial was necessary to cure this error. We granted certiorari, —— U. S. —— (1983), and now hold that respondents are not entitled to a new trial unless the juror's failure to disclose denied respondents their right to an impartial jury.

During the *voir dire* prior to the empaneling of the six-member jury, respondents' attorney asked prospective jurors the following question:

> "Now, how many of you have yourself or any members of your immediate family sustained any severe injury, not

p. 3, 7-8

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JAN 6 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-958

McDONOUGH POWER EQUIPMENT, INC., PETITIONER *v.* BILLY G. GREENWOOD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January ——, 1984]

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Respondents, Billy Greenwood and his parents, sued petitioner McDonough Power Equipment, Incorporated to recover damages sustained by Billy when his feet came in contact with the blades of a riding lawn mower manufactured by petitioner. The United States District Court for the District of Kansas entered judgment for petitioner upon a jury verdict and denied respondents' motion for new trial. On appeal, however, the Court of Appeals for the Tenth Circuit reversed the judgment of the District Court and ordered a new trial. It held that the failure of a juror to respond affirmatively to a question on *voir dire* seeking to elicit information about previous injuries to members of the juror's immediate family had "prejudiced the Greenwoods' right of peremptory challenge," *Greenwood* v. *McDonough Power Equipment, Inc.*, 687 F. 2d 338, 342 (CA10 1982), and that a new trial was necessary to cure this error. We granted certiorari, —— U. S. —— (1983), and now hold that respondents are not entitled to a new trial unless the juror's failure to disclose denied respondents their right to an impartial jury.

During the *voir dire* prior to the empaneling of the six-member jury, respondents' attorney asked prospective jurors the following question:

> "Now, how many of you have yourself or any members of your immediate family sustained any severe injury, not

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 4, 1984

Re: 82-958 - McDonough Power Equipment
v. Greenwood

Dear Bill:

The last sentence on page 7 of your opinion indicates that your recollection of the conference consensus is a little different than mine. I thought we had agreed on a standard that would require a new trial if a correct answer to the question would have provided a basis for a challenge for cause. Accordingly, I would be happy to join your opinion if you could revise the sentence in question to read this way:

> "We hold that to obtain a new trial in such a situation, a party must first demonstrate that a juror failed to answer correctly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause."

Respectfully,

John

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1984

Re: 82-958 - McDonough Power Equipment
v. Greenwood

Dear Bill:

Please join me.

Respectfully,

John

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 13, 1984

Re: 82-958 - McDonough Power Equipment
v. Greenwood

Dear Harry:

Please join me.

Respectfully,

John

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 12, 1984

No. 82-958 McDonough Power Equipment v. Greenwood

Dear Bill,

I join your opinion, but also join Harry's concurrence which addresses one of my continuing concerns about a test which focuses on the honesty of the juror's response.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

82-958
1/13/84

Supreme Court of the United States
Memorandum

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Harry —
I am joining
your concurrence
in Greenwood
82-958

Sandra

also VR

Harry Cal

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 13, 1984

No. 82-958 McDonough Power Equipment
v. Greenwood

Dear Harry,

Please join me in your concurrence.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference