The Burger Court Opinion Writing Database

California v. Trombetta

467 U.S. 479 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

(3)

CHAMBERS OF
THE CHIEF JUSTICE

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 23 A9:31

May 22, 1984

Re: 83-305 - California v. Trombetta

Dear Thurgood:

I join.

Regards,

Justice Marshall

Copies to the Conference

(6)

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 24, 1984

No. 83-305

California v. Trombetta

Dear Thurgood,

I agree.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1984

Re: 83-305 - California v. Trombetta

Dear Thurgood,

Please join me.

Sincerely yours,

Justice Marshall

Copies to the Conference

cpm

May 22, 1984

Re: No. 83-305-California v. Trombetta

Dear Sandra:

Thank you for your memorandum. I have just sent to the printer several minor revisions of my draft in this case, including two of your suggestions. I have modified the first sentence of the opinion and have eliminated the word "The" on page seven. As to your remaining concerns, I would prefer not to make further adjustment.

Sincerely,

T.M.

Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.

¶ 1, 4, 7

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

From: **Justice Marshall**

Circulated: MAY 23 1984

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-305

CALIFORNIA, PETITIONER *v.* ALBERT WALTER TROMBETTA ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

[May ——, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

The Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or to punishment. *United States* v. *Agurs*, 427 U. S. 97 (1976); *Brady* v. *Maryland*, 373 U. S. 83 (1963). This case raises the question whether the Fourteenth Amendment also demands that the State preserve potentially exculpatory evidence on behalf of defendants. In particular, the question presented is whether the Due Process Clause requires law enforcement agencies to preserve breath samples of suspected drunk drivers in order for the results of breath-analysis tests to be admissible in criminal prosecutions.

I

The Omicron Intoxilyzer ("Intoxilyzer") is a device used in California to measure the concentration of alcohol in the blood of motorists suspected of driving while under the influence of intoxicating liquor.[1] The Intoxilyzer analyzes the

[1] Law enforcement agencies in California are obliged to use breath analysis equipment that has been approved by the State's Department of Health. See 17 Cal. Admin. Code § 1221. The Department has approved a number of blood-alcohol testing devices employing a variety of technologies, see List of Instruments and Related Accessories Approved for Breath Alcohol Analysis (Dec. 20, 1979), reprinted in App. 238-247, of

P, 10

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

From: **Justice Marsha**

Circulated: _____

Recirculated: JUN 4 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-305

CALIFORNIA, PETITIONER *v.* ALBERT WALTER TROMBETTA ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

[June ——, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

The Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or to punishment. *United States* v. *Agurs*, 427 U. S. 97 (1976); *Brady* v. *Maryland*, 373 U. S. 83 (1963). This case raises the question whether the Fourteenth Amendment also demands that the State preserve potentially exculpatory evidence on behalf of defendants. In particular, the question presented is whether the Due Process Clause requires law enforcement agencies to preserve breath samples of suspected drunk drivers in order for the results of breath-analysis tests to be admissible in criminal prosecutions.

I

The Omicron Intoxilyzer ("Intoxilyzer") is a device used in California to measure the concentration of alcohol in the blood of motorists suspected of driving while under the influence of intoxicating liquor.[1] The Intoxilyzer analyzes the

[1] Law enforcement agencies in California are obliged to use breath analysis equipment that has been approved by the State's Department of Health. See 17 Cal. Admin. Code § 1221. The Department has approved a number of blood-alcohol testing devices employing a variety of technologies, see List of Instruments and Related Accessories Approved for Breath Alcohol Analysis (Dec. 20, 1979), reprinted in App. 238-247, of

P. 1

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

From: **Justice Marshal**

Circulated: _____

Recirculated: MAY 31 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1643

INTERSTATE COMMERCE COMMISSION, ET AL., PETITIONERS *v.* AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

omission [

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

[June ——, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents a challenge to an effort by the Interstate Commerce Commission to create a new remedy to enforce motor-carrier rate-bureau agreements. The remedy at issue is the Commission's authority to reject effective tariffs that have been submitted in substantial violation of rate-bureau agreements. As we have recognized in the past, the Interstate Commerce Commission ("Commission" or "ICC") has discretion to fashion remedies in furtherance of its statutory responsibilities. *Trans Alaska Pipeline Rate Cases*, 436 U. S. 361, 654 (1978). Although rejection of effective tariffs is a form of remedial power not expressly delegated to the Commission, the remedy as proposed by the Commission in this case is closely and directly related to the Commission's express statutory powers and is designed to achieve objectives set for the Commission by Congress. Under these limited circumstances, we hold that the proposed remedy lies within the Commission's discretion.

I

Motor carrier rate bureaus are groups of motor carriers formed to negotiate collective rates. Since the Reed-Bulwinkle Act of 1948, motor carriers within the jurisdiction of the Commission have enjoyed immunity from the antitrust

(2)

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 18 P2:08

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 18, 1984

Re: No. 83-305, California v. Trombetta

Dear Thurgood:

Please join me.

Sincerely,

H.A.B.
/by lrs

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 21, 1984

83-305 California v. Trombetta

Dear Thurgood:

I like your opinion in this case, and expect to join it.

I do have a couple of questions. The last sentence in note 7 seems unnecessary. Nor am I sure I understand it. In a theoretical sense the breath samples came into the "possession of California officials", but there was no feasible way to preserve them.

The last sentence in note 10 also troubles me. It states:

> "After all, if the Intoxilyzer were prone to erroneous readings, than Intoxilyzer results would be insufficient to establish guilt beyond a reasonable doubt."

The sentence seems speculative, certainly in view of the facts in this case. Also, the sentence may raise questions as to the degree of "erroneousness", and whether other evidence would be sufficient to meet the state's burden.

If these two sentences could be omitted, I will be happy to join you.

Sincerely,

Lewis

Justice Marshall

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1984

83-305 California v. Trombetta

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

(2)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1984

Re: No. 83-305 California v. Trombetta

Dear Thurgood:

Please join me.

Sincerely,

WHR

Justice Marshall

cc: The Conference

(1)

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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

May 17, 1984

Re: 83-305 - California v. Trombetta

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 22 P2:00

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 22, 1984

No. 83-305 California v. Trombetta

Dear Thurgood,

I anticipate joining your opinion in this case. I do, however, have several concerns that I hope you will find possible to address.

The first sentence of the opinion does not mention the requirement, found in both Brady and Agurs, that the evidence which the State must disclose is limited to evidence favorable to the accused. Without mention of that element, the first sentence may be quoted out of context.

On page 6, at line 10, the sentence presently indicates that the "materiality" requirement applies only to "guilt" questions, and that a new "relevancy" requirement applies to punishment issues. Perhaps the sentence should be rewritten substantially as follows: "A defendant has a constitutionally protected privilege to request and to obtain from the prosecution favorable evidence that is material either to the guilt of the defendanat or to the punishment to be imposed. Brady v. Maryland, 373 U.S., at 87."

On page 7, I believe there is at least one other case in which the Court has discussed due process constraints on the government's failure to preserve exculpatory evidence--to wit, United States v. Augenblick, 393 U.S. 348, 356 (1969). Perhaps the first word, "The," in the first line of the last paragraph could be deleted and a citation to Augenblick added after the citation to Killian.

Finally, I must confess that I do not understand footnote 11 on page 11. The footnote appears to say that the availability of alternative tests for determining blood-alcohol content or for preserving test results is irrelevant to the due process analysis because they were unknown to the defendants. If so, the footnote would mark a radical departure from prevailing law, which presumes that all persons know their rights under the law. Alternatively, the footnote may mean to say that the existence of alternative tests is irrelevant to due process analysis since they have nothing to do with the fundamental fairness of the convictions actually obtained. I could be persuaded of only the latter view. In either case, I hope you would be willing to delete the dicta about defendants' lack of awareness of the alternative mechanisms.

Sincerely,

Sandra

Justice Marshall

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

From: **Justice O'Conn**

Circulated: MAY 30

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–305

CALIFORNIA, PETITIONER *v.* ALBERT WALTER TROMBETTA ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

[June ——, 1984]

JUSTICE O'CONNOR, concurring.

Rules concerning preservation of evidence are generally matters of state, not federal constitutional, law. See *United States* v. *Augenblick*, 393 U. S. 348, 352–353 (1969). The failure to preserve breath samples does not render a prosecution fundamentally unfair, and thus cannot render breath-analysis tests inadmissible as evidence against the accused. *Id.*, at 356. Similarly, the failure to employ alternative methods of testing blood-alcohol concentrations is of no due process concern, both because persons are presumed to know their rights under the law and because the existence of tests not used in no way affects the fundamental fairness of the convictions actually obtained. I understand the Court to state no more than these well-settled propositions. Accordingly, I join both its opinion and judgment.