

The Burger Court Opinion Writing Database

Oregon v. Elstad

470 U.S. 298 (1985)

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





CHAMBERS OF
THE CHIEF JUSTICE

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

October 31, 1984

Re: No. 83-773 - Oregon v. Elstad

Dear Sandra:

I join.

Regards,

Justice O'Connor

Copies to the Conference

AM

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 9, 1984

No. 83-773

Oregon v. Elstad

Dear Thurgood and John,

We three are in dissent in the
above. I am willing to undertake the
dissent.

Sincerely,

W. Marshall

Justice Marshall

Justice Stevens

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 1, 1984

No. 83-773

Oregon v. Elstad

Dear Sandra,

I will be circulating a dissent in
the above. It may take me a little
while.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

34 30

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

From: Justice Brennan

Circulated: JAN 02 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER v. MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF OREGON

[January —, 1985]

JUSTICE BRENNAN, dissenting.

The Self-Incrimination Clause of the Fifth Amendment guarantees every individual that, if taken into official custody, he shall be informed of important constitutional rights and be given the opportunity knowingly and voluntarily to waive those rights before being interrogated about suspected wrongdoing. *Miranda v. Arizona*, 384 U. S. 436 (1966).¹ This guarantee embodies our society's conviction that "no system of criminal justice can or should survive if it comes to depend for its continued effectiveness on the citizens' abdication, through unawareness, of their constitutional rights." *Escobedo v. Illinois*, 378 U. S. 478, 488 (1964).

Even while purporting to reaffirm these constitutional guarantees, the Court has engaged of late in a studied campaign to strip the *Miranda* decision piecemeal and to undermine the rights *Miranda* sought to secure. Today's decision not only extends this effort a further step, but delivers a crippling blow to *Miranda* and the ability of courts to safeguard the rights of persons accused of crime. For at least with respect to successive confessions, the Court today strips rem-

¹"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently." *Id.*, at 444.

THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 17-18, 25-26,
28-29, 36, 39

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

From: Justice Brennan

Circulated: _____

Recirculated: JAN 11 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF OREGON

[January —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
dissenting.

The Self-Incrimination Clause of the Fifth Amendment guarantees every individual that, if taken into official custody, he shall be informed of important constitutional rights and be given the opportunity knowingly and voluntarily to waive those rights before being interrogated about suspected wrongdoing. *Miranda v. Arizona*, 384 U. S. 436 (1966).¹ This guarantee embodies our society's conviction that "no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights." *Escobedo v. Illinois*, 378 U. S. 478, 490 (1964).

Even while purporting to reaffirm these constitutional guarantees, the Court has engaged of late in a studied campaign to strip the *Miranda* decision piecemeal and to undermine the rights *Miranda* sought to secure. Today's decision not only extends this effort a further step, but delivers a crippling blow to *Miranda* and the ability of courts to safeguard the rights of persons accused of crime. For at least with

¹"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." *Id.*, at 444.

CONSTITUTIONAL HISTORY OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

1-6, 8, 10, 12, 14-16,
18-20, 22-30, 32, 34, 37,
39, 41, 43, 45-46

FOOTNOTES REMEMBERED PASSIM

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

From: **Justice Brennan**

Circulated: _____

Recirculated: FEB 7 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF OREGON

[February —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
dissenting.

The Self-Incrimination Clause of the Fifth Amendment guarantees every individual that, if taken into official custody, he shall be informed of important constitutional rights and be given the opportunity knowingly and voluntarily to waive those rights before being interrogated about suspected wrongdoing. *Miranda v. Arizona*, 384 U. S. 436 (1966).¹ This guarantee embodies our society's conviction that "no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights." *Escobedo v. Illinois*, 378 U. S. 478, 490 (1964).

Even while purporting to reaffirm these constitutional guarantees, the Court has engaged of late in a studied campaign to strip the *Miranda* decision piecemeal and to undermine the rights *Miranda* sought to secure. Today's decision not only extends this effort a further step, but delivers a potentially crippling blow to *Miranda* and the ability of courts to safeguard the rights of persons accused of crime.

¹"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." 384 U. S., at 444.

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 21, 1984

83-773 - Oregon v. Elstad

Dear Sandra,

I would be happier if we did not say on page 13 that Officer Burke "undeniably" breached Miranda procedures in the living room of petitioner's house. I'm not so sure, and it would be enough for us to say that as the case comes to us it is to be assumed that petitioner was in custody when he made his admission. But, I shall leave that in your hands and join your circulating draft.

Sincerely yours,



Justice O'Connor

Copies to the Conference

RECEIVED AND THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 1, 1984

Re: No. 83-773-Oregon v. Elstad

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1985

Re: No. 83-773-Oregon v. Elstad

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

RECEIVED AND COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 19, 1984

Re: No. 83-773, Oregon v. Elstad

Dear Sandra:

I have not overlooked this case, but I am awaiting further writings. I shall at least be with you in the result.

Sincerely,



Justice O'Connor

cc: The Conference

31 - 11

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 28, 1985

Re: No. 83-773, Oregon v. Elstad

Dear Sandra:

I join your latest draft.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice O'Connor

cc: The Conference

RECEIVED FROM THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

3

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 1, 1984

83-773 Oregon v. Elstad

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

REPRODUCTION OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

7

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 31, 1984

Re: No. 84-773 Oregon v. Elstad

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 21, 1984

Re: No. 83-773 Oregon v. Elstad

Dear Sandra,

I would be pleased to see you adopt the suggestion made by Byron in his letter of November 21st.

Sincerely,

WM

Justice O'Connor

cc: The Conference

84 11 21 10 21

CONGRESSIONAL RECORDS
OF THE
MANUSCRIPT DIVISION,
LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 1, 1984

Re: 83-773 - Oregon v. Elstad

Dear Sandra:

I shall await the dissenting opinion.

Respectfully,



Justice O'Connor

Copies to the Conference

SI 10 33 1 84

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

From: Justice Stevens

Circulated: FEB 12 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF OREGON

[February —, 1985]

JUSTICE STEVENS, dissenting.

The Court concludes its opinion with a carefully phrased statement of its holding:

“We hold today that a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings.” *Ante*, at 19.

I find nothing objectionable in such a holding. Moreover, because the Court expressly endorses the “bright line rule of *Miranda*,” which conclusively presumes that incriminating statements obtained from a suspect in custody without administering the required warnings are the product of compulsion,¹ and because the Court places so much emphasis on the special facts of this case, I am persuaded that the Court intends its holding to apply only to a narrow category of cases in which the initial questioning of the suspect was made in a totally uncoercive setting and in which the first confession

¹“When police ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the answers received be presumed compelled and that they be excluded from evidence at trial in the State’s case in chief. The Court has carefully adhered to this principle, permitting a narrow exception only where pressing public safety concerns demanded. See *New York v. Quarles*, 467 U. S., at —. The Court today in no way retreats from the bright line rule of *Miranda*.” *Ante*, at 18.

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 2, 7, 8

New Footnote 15; removing Hrs. renumbered

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

From: **Justice Stevens**

Circulated: _____

Recirculated: FEB 21 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF OREGON

[February —, 1985]

JUSTICE STEVENS, dissenting.

The Court concludes its opinion with a carefully phrased statement of its holding:

“We hold today that a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings.” *Ante*, at 19.

I find nothing objectionable in such a holding. Moreover, because the Court expressly endorses the “bright line rule of *Miranda*,” which conclusively presumes that incriminating statements obtained from a suspect in custody without administering the required warnings are the product of compulsion,¹ and because the Court places so much emphasis on the special facts of this case, I am persuaded that the Court intends its holding to apply only to a narrow category of cases in which the initial questioning of the suspect was made in a totally uncoercive setting and in which the first confession

¹“When police ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the answers received be presumed compelled and that they be excluded from evidence at trial in the State’s case in chief. The Court has carefully adhered to this principle, permitting a narrow exception only where pressing public safety concerns demanded. See *New York v. Quarles*, 467 U. S., at —. The Court today in no way retreats from the bright line rule of *Miranda*.” *Ante*, at 18.

NOT IN THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice O'Connor**

Circulated: 307 31

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF OREGON

[October —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether an initial failure of law enforcement officers to administer the warnings required by *Miranda v. Arizona*, 384 U. S. 436 (1966), without more, "taints" subsequent admissions made after a suspect has been fully advised of and has waived his *Miranda* rights. Respondent, Michael James Elstad, was convicted of burglary by an Oregon trial court. The Oregon Court of Appeals reversed, holding that respondent's signed confession, although voluntary, was rendered inadmissible by a prior remark made in response to questioning without benefit of *Miranda* warnings. We granted certiorari, 456 U. S. — (1984), and we now reverse.

I

In December, 1981, the home of Mr. and Mrs. Gilbert Gross, in the town of Salem, Polk County, Oregon, was burglarized. Missing were art objects and furnishings valued at \$150,000. A witness to the burglary contacted the Polk County Sheriff's Office, implicating respondent Michael Elstad, an 18-year-old neighbor and friend of the Gross's teenage son. Thereupon, Officers Burke and McAllister went to the home of respondent Elstad, with a warrant for his arrest. Elstad's mother answered the door. She led the officers to her son's room where he lay on his bed, clad in shorts and listening to his stereo. The officers asked him to get dressed and to accompany them into the living room.

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

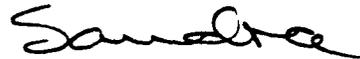
November 21, 1984

No. 83-773 Oregon v. Elstad

Dear Byron,

I will make a change along the lines you
have requested in the next draft of the opinion.

Sincerely,



Justice White

Copies to the Conference

REPRODUCTION OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Stylistic Changes Throughout

pp. 13

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



From: Justice O'Connor

Circulated: _____

Recirculated: NOV 28 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF OREGON

[November —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether an initial failure of law enforcement officers to administer the warnings required by *Miranda v. Arizona*, 384 U. S. 436 (1966), without more, "taints" subsequent admissions made after a suspect has been fully advised of and has waived his *Miranda* rights. Respondent, Michael James Elstad, was convicted of burglary by an Oregon trial court. The Oregon Court of Appeals reversed, holding that respondent's signed confession, although voluntary, was rendered inadmissible by a prior remark made in response to questioning without benefit of *Miranda* warnings. We granted certiorari, 465 U. S. — (1984), and we now reverse.

I

In December, 1981, the home of Mr. and Mrs. Gilbert Gross, in the town of Salem, Polk County, Ore., was burglarized. Missing were art objects and furnishings valued at \$150,000. A witness to the burglary contacted the Polk County Sheriff's Office, implicating respondent Michael Elstad, an 18-year-old neighbor and friend of the Grosses' teenage son. Thereupon, Officers Burke and McAllister went to the home of respondent Elstad, with a warrant for his arrest. Elstad's mother answered the door. She led the officers to her son's room where he lay on his bed, clad in shorts and listening to his stereo. The officers asked him to get dressed and to accompany them into the living room. Officer

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 8, 1985

No. 83-773 Oregon v. Elstad

MEMORANDUM TO THE CONFERENCE

I will be circulating some modest changes in response to Bill Brennan's dissent, but it will likely be at least a week before I can get around to it.

Sincerely,



PP. 5, 7, 8, 9, 10, 11, 12, 13
14, 15, 17, 18, 19

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: JAN 25 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF OREGON

[January —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether an initial failure of law enforcement officers to administer the warnings required by *Miranda v. Arizona*, 384 U. S. 436 (1966), without more, "taints" subsequent admissions made after a suspect has been fully advised of and has waived his *Miranda* rights. Respondent, Michael James Elstad, was convicted of burglary by an Oregon trial court. The Oregon Court of Appeals reversed, holding that respondent's signed confession, although voluntary, was rendered inadmissible by a prior remark made in response to questioning without benefit of *Miranda* warnings. We granted certiorari, 465 U. S. — (1984), and we now reverse.

I

In December, 1981, the home of Mr. and Mrs. Gilbert Gross, in the town of Salem, Polk County, Ore., was burglarized. Missing were art objects and furnishings valued at \$150,000. A witness to the burglary contacted the Polk County Sheriff's Office, implicating respondent Michael Elstad, an 18-year-old neighbor and friend of the Grosses' teenage son. Thereupon, Officers Burke and McAllister went to the home of respondent Elstad, with a warrant for his arrest. Elstad's mother answered the door. She led the officers to her son's room where he lay on his bed, clad in shorts and listening to his stereo. The officers asked him to get dressed and to accompany them into the living room. Officer

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Justice O'Connor

Circulated: _____

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-773

OREGON, PETITIONER *v.* MICHAEL JAMES ELSTAD

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF OREGON

[February —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether an initial failure of law enforcement officers to administer the warnings required by *Miranda v. Arizona*, 384 U. S. 436 (1966), without more, "taints" subsequent admissions made after a suspect has been fully advised of and has waived his *Miranda* rights. Respondent, Michael James Elstad, was convicted of burglary by an Oregon trial court. The Oregon Court of Appeals reversed, holding that respondent's signed confession, although voluntary, was rendered inadmissible by a prior remark made in response to questioning without benefit of *Miranda* warnings. We granted certiorari, 465 U. S. — (1984), and we now reverse.

I

In December, 1981, the home of Mr. and Mrs. Gilbert Gross, in the town of Salem, Polk County, Ore., was burglarized. Missing were art objects and furnishings valued at \$150,000. A witness to the burglary contacted the Polk County Sheriff's Office, implicating respondent Michael Elstad, an 18-year-old neighbor and friend of the Grosses' teenage son. Thereupon, Officers Burke and McAllister went to the home of respondent Elstad, with a warrant for his arrest. Elstad's mother answered the door. She led the officers to her son's room where he lay on his bed, clad in shorts and listening to his stereo. The officers asked him to get dressed and to accompany them into the living room. Officer

PP. 8, 19

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS