The Burger Court Opinion Writing Database

Wainwright v. Greenfield

474 U.S. 284 (1986)

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

December 18, 1985

Re: No. 84-1480 - Wainwright v. Greenfield

Dear Bill:

I join your concurring opinion.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

/

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 15, 1985

No. 84-1480

Wainwright v. Greenfield

Dear Chief,

John has agreed to try his hand at an opinion for the Court in the above.

Sincerely,

Bill

The Chief Justice

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 9, 1985

No. 84-1480

Wainwright v. Greenfield

Dear John,

I agree. Please join me in the above.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

CHAMBERS OF
JUSTICE BYRON R. WHITE

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

December 4, 1985

84-1480 - Wainwright v. Greenfield

Dear John,

Please join me.

Sincerely yours,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 10, 1985

Re: No. 84-1480-Wainwright v. Greenfield

Dear John:

Please join me.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1985

Re: No. 84-1480, Wainwright v. Greenfield

Dear John:

Please join me.

I assume that you and Sandra will be able to work out to your satisfaction the points she raises in her letter of December 4. I am inclined to agree with her first and third comments. As to the second, would it be worth mentioning that the officers could have testified that the respondent seemed completely rational at the time of the arrest, so that the State was not effectively hamstrung by the operation of the Doyle principle?

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 7, 1985

84-1480 Wainwright v. Greenfield

Dear John:

Please join me in your opinion for the Court.

I think you have correctly and carefully applied Doyle v. Ohio. I have noted Sandra's suggestions, and have no strong feeling one way or the other about them. I will stay with you whichever way you go on them.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 3, 1985

Re: No. 84-1480 Wainwright v. Greenfield

Dear John,

I will try my hand at a dissent in this case.

Sincerely,

Justice Stevens

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: DEC 17 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1480

LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, PETITIONER *v.* DAVID WAYNE GREENFIELD

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

[December ——, 1985]

JUSTICE REHNQUIST, concurring in the result.

I agree with the Court that our opinion in *Doyle* v. *Ohio*, 426 U. S. 610 (1976), shields from comment by a prosecutor a defendant's silence after receiving *Miranda* warnings, even though the comment be addressed to the defendant's claim of insanity. I write separately, however, to point out that it does not follow from this that the Court of Appeals, which took the same position, reached the correct result. That court expanded *Doyle* to cover not merely silence, but requests for counsel, and ignored the fact that the evidence upon which the prosecutor commented had been admitted without objection. Analyzed in these terms, the Court of Appeals' conclusion that the "error" was not harmless is suspect: The portion of the prosecutor's closing statement that the Court of Appeals amounted to constitutional error was in large part unobjectionable from a constitutional point of view, and the officer's testimony relating to silence was already before the jury, without objection. I concur in the result reached today because one of the prosecutor's comments, however brief, was an improper comment on respondent's silence, and the State does not argue here that any error was harmless beyond a reasonable doubt.

In *Doyle*, the Court said:

p. 1

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: DEC 19 [illegible]

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1480

LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, PETITIONER
v. DAVID WAYNE GREENFIELD

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

[December ——, 1985]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, concurring in the result.

I agree with the Court that our opinion in *Doyle* v. *Ohio*, 426 U. S. 610 (1976), shields from comment by a prosecutor a defendant's silence after receiving *Miranda* warnings, even though the comment be addressed to the defendant's claim of insanity. I write separately, however, to point out that it does not follow from this that the Court of Appeals, which took the same position, reached the correct result. That court expanded *Doyle* to cover not merely silence, but requests for counsel, and ignored the fact that the evidence upon which the prosecutor commented had been admitted without objection. Analyzed in these terms, the Court of Appeals' conclusion that the "error" was not harmless is suspect: The portion of the prosecutor's closing statement that the Court of Appeals held amounted to constitutional error was in large part unobjectionable from a constitutional point of view, and the officer's testimony relating to silence was already before the jury, without objection. I concur in the result reached today because one of the prosecutor's comments, however brief, was an improper comment on respondent's silence, and the State does not argue here that any error was harmless beyond a reasonable doubt.

In *Doyle*, the Court said:

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

From: **Justice Stevens**

Circulated: DEC 3 19

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1480

LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, PETITIONER
v. DAVID WAYNE GREENFIELD

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

[December ——, 1985]

JUSTICE STEVENS delivered the opinion for the Court.

Respondent entered a plea of not guilty by reason of insanity to a charge of sexual battery. At his trial in the Circuit Court for Sarasota County, Florida, the prosecutor argued that respondent's silence after receiving *Miranda* warnings was evidence of his sanity. The question presented is whether such use of a defendant's silence violates the Due Process Clause of the Fourteenth Amendment as construed in *Doyle* v. *Ohio*, 426 U. S. 610 (1976).

I

The battery occurred in woods near a beach in the vicinity of Sarasota, Florida. After respondent released his victim, she drove directly to the police station to report the incident. Based on her description, Officer Pilifant identified respondent on the beach and placed him under arrest about two hours after the assault occurred. After handcuffing him, the officer gave respondent the warnings required by our decision in *Miranda* v. *Arizona*, 384 U. S. 436, 467–473 (1966). Specifically, Officer Pilifant stated:

> "You have a right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 6, 1985

Re: 84-1480 - Wainwright v. Greenfield

Dear Sandra:

Thank you for your letter suggesting three possible changes in my circulating draft. I am not firmly opposed to any of your suggestions but I would like to explain my reasons for including the three comments that you think might well be omitted.

First, the two sentences at the bottom of page 9 and running over onto page 10 commenting on the doubtful probative value of silence in the context of this case are intended to respond to the contrary argument advanced by the state, and to apply Doyle as carefully as possible. According to my Conference notes, there were seven votes to affirm on the theory that "Doyle controls." Since a major part of the Florida Attorney General's argument rests on the significance of Doyle's "insolubly ambiguous" language, I'm not sure if it is fair to respond only with the other "dispositive answer" you mention. You may recall that I was not the most enthusiastic supporter of this language at the time Doyle was decided. Now that it is a part of our case law, however, and in view of the fact that the Attorney General quite naturally devoted a good deal of his argument to that part of the opinion, I think a response to that specific point may be warranted.

The purpose of the carryover paragraph on pages 10-11 is to limit the scope of our holding. It would seem to me unfortunate if state prosecutors felt that they were not free to put in evidence intended to show that the behavior of the defendant at the time of his arrest was perfectly rational, as indicated by

the dissenting opinion in the Florida Court of Appeal.

My reason for including the last sentence in footnote 13 is that some of the prosecutor's comment which is quoted earlier in the opinion in footnote 2 is a comment on the request for counsel rather than a comment on silence. Moreover, the Seventh Circuit in its opinion reaching a contrary conclusion, as well as the Eleventh Circuit in this case, specifically discussed the references to the request for an attorney. It does seem to me that comment on such a request is the functional equivalent of a comment on silence itself. Certainly if one is unfair so is the other.

In sum, although I would rather have your vote than any or all of the three portions of the opinion to which you object, I wonder if we might at least defer final decision on the points until we've received Bill Rehnquist's dissent.

Respectfully,

Justice O'Connor

Copies to the Conference

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

From: **Justice Stevens**

Circulated: _____

Recirculated: DEC 11 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1480

LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, PETITIONER
v. DAVID WAYNE GREENFIELD

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

[December ——, 1985]

JUSTICE STEVENS delivered the opinion for the Court.

Respondent entered a plea of not guilty by reason of insanity to a charge of sexual battery. At his trial in the Circuit Court for Sarasota County, Florida, the prosecutor argued that respondent's silence after receiving *Miranda* warnings was evidence of his sanity. The question presented is whether such use of a defendant's silence violates the Due Process Clause of the Fourteenth Amendment as construed in *Doyle* v. *Ohio*, 426 U. S. 610 (1976).

I

The battery occurred in woods near a beach in the vicinity of Sarasota, Florida. After respondent released his victim, she drove directly to the police station to report the incident. Based on her description, Officer Pilifant identified respondent on the beach and placed him under arrest about two hours after the assault occurred. After handcuffing him, the officer gave respondent the warnings required by our decision in *Miranda* v. *Arizona*, 384 U. S. 436, 467–473 (1966). Specifically, Officer Pilifant stated:

> "You have a right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 4, 1985

Re: 84-1480 Wainwright v. Greenfield

Dear John,

I think your opinion in this case properly applies Doyle and I would hope to join it. I offer three possible changes which I would appreciate your considering.

1. The carryover paragraph on pages 9-10 responds to the Florida Attorney General's contention that silence is far more probative of sanity than of the commission of the underlying offense. I believe that the dispositive answer to this contention is that the Due Process fairness concerns you stress throughout the opinion override the prosecutor's right to use this evidence even assuming that it is highly probative. Because I believe that questions of relevance should be left to state law, I would prefer not to include the two sentences that focus on the degree of ambiguity inherent in the use of post-Miranda silence in this context. (Beginning with "Second" on p. 9.)

2. I have similar concerns about the carryover paragraph on p. 10-11. Doyle itself explicitly rejected the argument that the State's need for probative evidence justified admission of the testimony. 426 U.S. 610, 616-617. It did so because the fairness considerations stemming from the implicit assurance that silence carries no penalty preclude admission of the evidence no matter how necessary it might be to the prosecutor's case. Although I don't feel strongly about it, I would prefer to rely on Doyle's reasoning to meet petitioner's argument rather than to suggest other means that the prosecutor might have used to make his case.

3. The last sentence of note 13 seems unnecessary to the opinion and concerns an issue that was not fully addressed by the parties. I would greatly prefer to see it omitted.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 9, 1985

Re: 84-1480 Wainwright v. Greenfield

Dear John,

Of course I have no objection to waiting for the dissent before resolving any changes in your draft.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

N

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 11, 1985

Re: 84-1480 Wainwright v. David Wayne Greenfield

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference