

The Burger Court Opinion Writing Database

Heath v. Alabama

474 U.S. 82 (1985)

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

November 25, 1985

RE: No. 84-5555 - Heath v. Alabama

Dear Sandra,

Please join me.

Regards,

A handwritten signature in black ink, appearing to be 'J. O'Connor', written in a cursive style.

Justice O'Conner

Copies to the Conference

M

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 21, 1985

No. 84-5555

Heath v. Alabama

Dear Thurgood,

We two are in dissent in the above.
I understand you are going to take it
on.

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 15, 1985

No. 84-5555, Heath v. Alabama

Dear Thurgood,

Please join me in your dissent. I
will also be circulating a very brief
separate statement.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Marshall

Copies to the Conference

Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Brennan

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5555

LARRY GENE HEATH, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF ALABAMA

[November —, 1985]

JUSTICE BRENNAN, dissenting.

I concur wholeheartedly in JUSTICE MARSHALL's dissent. I write separately only to clarify my views on the role that "different interests" should play in determining whether two prosecutions are "for the same offense" within the meaning of the Double Jeopardy Clause.

In *Abbate v. United States*, 359 U. S. 187 (1959), in addition to arguing that the dual sovereignty doctrine permitted successive state and federal prosecutions, the federal Government also urged that the federal prosecution was not barred because the two prosecutions were not "for the same offense." The Government's theory was that, because the federal and state statutes involved had divergent *specific purposes*—the federal law to protect communications and the state law to protect private property—and thus promoted different "interests," the prosecutions were really for different offenses.

I rejected this argument in a separate opinion. *Id.*, at 196-201. My concern was that "this reasoning would apply equally if each of two successive *federal* prosecutions based on the same acts was brought under a different *federal* statute, and each statute was designed to protect a different federal interest." *Id.*, at 197 (emphasis in original). That re-

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

From: Justice Brennan

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5555

LARRY GENE HEATH, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF ALABAMA

[November —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, \
 dissenting.

I concur wholeheartedly in JUSTICE MARSHALL's dissent. I write separately only to clarify my views on the role that "different interests" should play in determining whether two prosecutions are "for the same offense" within the meaning of the Double Jeopardy Clause.

In *Abbate v. United States*, 359 U. S. 187 (1959), in addition to arguing that the dual sovereignty doctrine permitted successive state and federal prosecutions, the federal Government also urged that the federal prosecution was not barred because the two prosecutions were not "for the same offense." The Government's theory was that, because the federal and state statutes involved had divergent *specific purposes*—the federal law to protect communications and the state law to protect private property—and thus promoted different "interests," the prosecutions were really for different offenses.

I rejected this argument in a separate opinion. *Id.*, at 196-201. My concern was that "this reasoning would apply equally if each of two successive *federal* prosecutions based on the same acts was brought under a different *federal* statute, and each statute was designed to protect a different fed-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1985

Re: 84-5555 - Heath v. Alabama

Dear Sandra,

I agree.

Sincerely yours,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 12, 1985

Re: No. 84-5555-Heath v. Alabama

Dear Sandra:

I shall try my hand at a dissent in this one.

Sincerely,

J.M.

T.M.

Justice O'Connor

cc: The Conference

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

From: **Justice Marshall**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5555

LARRY GENE HEATH, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF ALABAMA

[November —, 1985]

JUSTICE MARSHALL, dissenting.

Seizing upon the suggestion in past cases that every "independent" sovereign government may prosecute violations of its laws even when the defendant has already been tried for the same crime in another jurisdiction, the Court today gives short shrift to the policies underlying those precedents. The "dual sovereignty" doctrine, heretofore used to permit federal and state prosecutions for the same offense, was born of the need to accommodate complementary state and federal concerns within our system of concurrent territorial jurisdictions. It cannot justify successive prosecutions by different States. Moreover, even were the dual sovereignty doctrine to support successive state prosecutions as a general matter, it simply could not legitimate the collusion between Georgia and Alabama in this case to ensure that petitioner is executed for his crime.

I

On August 31, 1981, the body of Rebecca Heath was discovered in an abandoned car in Troup County, Georgia. Because the deceased was a resident of Russell County, Alabama, members of the Russell County Sheriff's Department immediately joined Troup County authorities in investigating the causes and agents of her death. Tr. 359. This cooperative effort proved fruitful. On September 4, petitioner Larry Heath, the deceased's husband, was arrested and brought to the Georgia State Patrol barracks in Troup

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

STYLISTIC CHANGES THROUGHOUT

From: **Justice Marshall**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5555

LARRY GENE HEATH, PETITIONER v. ALABAMA

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA**

[November —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Seizing upon the suggestion in past cases that every "independent" sovereign government may prosecute violations of its laws even when the defendant has already been tried for the same crime in another jurisdiction, the Court today gives short shrift to the policies underlying those precedents. The "dual sovereignty" doctrine, heretofore used to permit federal and state prosecutions for the same offense, was born of the need to accommodate complementary state and federal concerns within our system of concurrent territorial jurisdictions. It cannot justify successive prosecutions by different States. Moreover, even were the dual sovereignty doctrine to support successive state prosecutions as a general matter, it simply could not legitimate the collusion between Georgia and Alabama in this case to ensure that petitioner is executed for his crime.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 26, 1985

Re: No. 84-5555 - Heath v. Alabama

Dear Bill:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 22, 1985

Re: No. 84-5555, Heath v. Alabama

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 12, 1985

84-5555 Heath v. Alabama

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

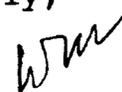
November 12, 1985

Re: No. 84-5555 Heath v. Alabama

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 13, 1985

Re: 84-5555 - Heath v. Alabama

Dear Sandra:

Because I have found this case particularly troubling, I shall wait for Thurgood's dissent. As presently advised, however, I expect to join you.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 15, 1985

Re: 84-5555 - Heath v. Alabama

Dear Sandra:

Please join me.

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 Stevens

From: **Justice O'Connor**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5555

LARRY GENE HEATH, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF ALABAMA

[November —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question before the Court is whether the Double Jeopardy Clause of the Fifth Amendment bars Alabama from trying petitioner for the capital offense of murder during a kidnapping after Georgia has convicted him of murder based on the same homicide. In particular, this case presents the issue of the applicability of the dual sovereignty doctrine to successive prosecutions by two States.

I

In August 1981, petitioner, Larry Gene Heath, hired Charles Owens and Gregory Lumpkin to kill his wife, Rebecca Heath, who was then nine months pregnant, for a sum of \$2,000. On the morning of August 31, 1981, petitioner left the Heath residence in Russell County, Alabama, to meet with Owens and Lumpkin in Georgia, just over the Alabama border from the Heath home. Petitioner led them back to the Heath residence, gave them the keys to the Heaths' car and house, and left the premises in his girlfriend's truck. Owens and Lumpkin then kidnapped Rebecca Heath from her home. The Heath car, with Rebecca Heath's body inside, was later found on the side of a road in Troup County, Georgia. The cause of death was a gunshot wound in the head. The estimated time of death and the distance from the Heath residence to the spot where Rebecca Heath's body was

PP. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

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. 84-5555

LARRY GENE HEATH, PETITIONER v. ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF ALABAMA

[November —, 1985]

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In August 1981, petitioner, Larry Gene Heath, hired Charles Owens and Gregory Lumpkin to kill his wife, Rebecca Heath, who was then nine months pregnant, for a sum of \$2,000. On the morning of August 31, 1981, petitioner left the Heath residence in Russell County, Alabama, to meet with Owens and Lumpkin in Georgia, just over the Alabama border from the Heath home. Petitioner led them back to the Heath residence, gave them the keys to the Heaths' car and house, and left the premises in his girlfriend's truck. Owens and Lumpkin then kidnaped Rebecca Heath from her home. The Heath car, with Rebecca Heath's body inside, was later found on the side of a road in Troup County, Georgia. The cause of death was a gunshot wound in the head. The estimated time of death and the distance from the Heath residence to the spot where Rebecca Heath's body was found

Stylistic Changes Throughout

Y.P. 7, 9, 10

Justice Brennan
Justice White
Justice Marshall
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. 84-5555

LARRY GENE HEATH, PETITIONER *v.* ALABAMAON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[December —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question before the Court is whether the Double Jeopardy Clause of the Fifth Amendment bars Alabama from trying petitioner for the capital offense of murder during a kidnaping after Georgia has convicted him of murder based on the same homicide. In particular, this case presents the issue of the applicability of the dual sovereignty doctrine to successive prosecutions by two States.

I

In August 1981, petitioner, Larry Gene Heath, hired Charles Owens and Gregory Lumpkin to kill his wife, Rebecca Heath, who was then nine months pregnant, for a sum of \$2,000. On the morning of August 31, 1981, petitioner left the Heath residence in Russell County, Alabama, to meet with Owens and Lumpkin in Georgia, just over the Alabama border from the Heath home. Petitioner led them back to the Heath residence, gave them the keys to the Heaths' car and house, and left the premises in his girlfriend's truck. Owens and Lumpkin then kidnaped Rebecca Heath from her home. The Heath car, with Rebecca Heath's body inside, was later found on the side of a road in Troup County, Georgia. The cause of death was a gunshot wound in the head. The estimated time of death and the distance from the Heath residence to the spot where Rebecca Heath's body was found