

The Burger Court Opinion Writing Database

Miller v. Fenton

474 U.S. 104 (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

October 24, 1985

Re: No. 84-5786 - Miller v. Fenton

Dear Sandra:

I would prefer to affirm on the merits, but I can go along with a remand if a majority believes it is necessary.

Regards,

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

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

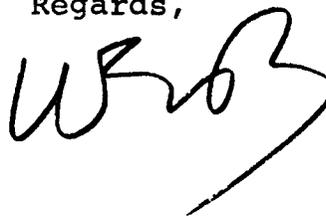
November 26, 1985

RE: 84-5786 - Miller v. Fenton

Dear Sandra:

I think Bill's dissent makes out a very strong case, but I will stay with my vote and join you.

Regards,

A handwritten signature in black ink, appearing to be "WB", with a long, sweeping underline that extends to the right.

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 21, 1985

No. 84-5786 Miller v. Fenton

Dear Sandra,

I am inclined to stick to the position I took at Conference. That is, I would explicitly hold that the voluntariness of a confession is a mixed question of law and fact that is subject to de novo review in federal habeas proceedings and I would remand to the Third Circuit for a determination of voluntariness using the correct standard.

Sincerely,

Bill

Justice O'Connor

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 14, 1985

No. 84-5786

Miller v. Fenton

Dear Sandra,

I agree.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 21, 1985

Re: 84-5786 - Miller v. Fenton

Dear Sandra,

I agree with Lewis in this case. I
would prefer to remand.

Sincerely yours,



Justice O'Connor

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82-11-100

5

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 15, 1985

Re: 84-5786 - Miller v. Fenton

Dear Sandra,

Please join me.

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 15, 1985

Re: No. 84-5786 - Miller v. Fenton

Dear Sandra:

Please join me.

Sincerely,

JM.
T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 22, 1985

Re: No. 84-5786, Miller v. Fenton

Dear Sandra:

I, too, would reject the Third Circuit's treatment of voluntariness as a factual issue and would hold that it is a mixed question of law and fact. I would prefer to remand.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 18, 1985

Re: No. 84-5786, Miller v. Fenton

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.

October 21, 1985

84-5786 Miller v. Fenton

Dear Sandra:

I agree that it is desirable "to recheck the Court" before you proceed with an opinion.

I also agree that we should reject affirmatively the Third Circuit's treatment of voluntariness of a confession as a factual issue, and hold that it is a mixed question of law and fact. CA3's remark in footnote 21 of its opinion that it "would reach the same result" on plenary review does not, in my view, rise to the level of an "alternative holding" that we may simply affirm on these facts. Would it not therefore be desirable to remand on this question. My notes indicate that this was the view of a majority.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

82 3. 6. 85

November 19, 1985

84-5786 Miller v. Fenton

Dear Sandra:

I think your opinion is excellent, and will join it.

I do have one suggestion that I would appreciate your considering. On p. 10 you cite Bose Corp. in the first full sentence, referring to its application in the "First-Amendment libel context". It would be helpful, I think, if it were made clear that Bose involved the question whether there was malice in a Sullivan v. New York Times type libel case. I am not at all sure that the Bose standard of appellate review would apply in every libel case. Cf. Dun & Bradstreet. Your sentence could be clarified by adding a few words - possibly as follows:

"Where, for example, the question is whether there was malice in a First Amendment libel case,"

I will join your opinion whether or not you accept my suggestion.

Sincerely,

Justice O'Connor

lfp/ss

6

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 19, 1985

84-5786 Miller v. Fenton

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

NOV 19 6 45 2

30

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 21, 1985

Re: No. 84-5786 Miller v. Fenton

Dear Sandra,

I cannot join your proposed disposition of the fact-law issue, but I could join that part of your opinion which concluded that the confession here was voluntary.

Sincerely,



Justice O'Connor

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: NOV 20 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5786

FRANK M. MILLER, JR., PETITIONER v. PETER J. FENTON, SUPERINTENDENT, RAHWAY STATE PRISON, ET AL.

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

[November —, 1985]

JUSTICE REHNQUIST, dissenting.

The Court decides that the voluntariness of a confession is not an issue of fact presumed to be correct under 28 U. S. C. § 2254(d). I think it is difficult to sensibly distinguish the determination that a particular confession was voluntary from the determinations which we have held to be entitled to a presumption of correctness under § 2254(d). See *Sumner v. Mata (Sumner I)*, 449 U. S. 539 (1981); *Sumner v. Mata (Sumner II)*, 455 U. S. 591 (1982) (*per curiam*); *Marshall v. Lonsberger*, 459 U. S. 422, 431-437 (1983), *Maggio v. Fulford*, 462 U. S. 111 (1983) (*per curiam*), *Rushen v. Spain*, 464 U. S. 114 (1983) (*per curiam*); *Patton v. Yount*, 467 U. S. —, —, slip op. at 10-14; and *Wainwright v. Witt*, — U. S. —, —, slip op. at 13-17 (1985). While the Court relies principally on *stare decisis* for the result it reaches today, almost all the cases upon which it relies entailed direct review by this Court of state court decisions rather than federal habeas review. But even if that difference were deemed immaterial, it seems to me that *stare decisis* is not a sufficient reason for excluding a finding as to the voluntariness of a confession from the presumption embodied in § 2254(d). All of the recent cases cited evince a more reasoned approach to this issue than the interesting but somewhat mystical exegesis in cases such as *Columbe v. Connecti-*

M

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

From: **Justice Rehnquist**

Circulated: _____

NOV 22 1985

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5786

FRANK M. MILLER, JR., PETITIONER *v.* PETER J.
 FENTON, SUPERINTENDENT, RAHWAY
 STATE PRISON, ET AL.

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

[November —, 1985]

JUSTICE REHNQUIST, dissenting.

The Court decides that the voluntariness of a confession is not an issue of fact presumed to be correct under 28 U. S. C. § 2254(d). I think it is difficult to sensibly distinguish the determination that a particular confession was voluntary from the determinations which we have held to be entitled to a presumption of correctness under § 2254(d). See *Sumner v. Mata (Sumner I)*, 449 U. S. 539 (1981); *Sumner v. Mata (Sumner II)*, 455 U. S. 591 (1982) (*per curiam*); *Marshall v. Lonberger*, 459 U. S. 422, 431-437 (1983), *Maggio v. Fulford*, 462 U. S. 111 (1983) (*per curiam*), *Rushen v. Spain*, 464 U. S. 114 (1983) (*per curiam*); *Patton v. Yount*, 467 U. S. —, — (1984) (slip op., at 10-14); and *Wainwright v. Witt*, 469 U. S. —, — (1985) (slip op., at 13-17). While the Court relies principally on *stare decisis* for the result it reaches today, almost all the cases upon which it relies entailed direct review by this Court of state court decisions rather than federal habeas review. But even if that difference were deemed immaterial, it seems to me that *stare decisis* is not a sufficient reason for excluding a finding as to the voluntariness of a confession from the presumption embodied in § 2254(d). All of the recent cases cited evince a more reasoned approach to this issue than the interesting but somewhat mystical exegesis in cases such as *Columbe v. Connecti-*

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 21, 1985

84-5786 Miller v. Fenton

Dear Sandra:

My vote remains the same as it was at conference. In short, I agree with Lewis that we should reject CA3's treatment of voluntariness as a factual issue and that we should remand.

Respectfully,

John/cs

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

↑
CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 14, 1985

Re: Miller v. Fenton - 84-5786

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 21, 1985

No. 84-5786 Miller v. Fenton

Dear Chief,

I am a bit uncertain how the votes lined up on this case and it would help me to recheck the count before I proceed. If there are at least four others who could join me, I would reject the Third Circuit's treatment of voluntariness of a confession as a purely factual issue and affirm its alternative holding that the confession in this case was voluntary despite the unfortunate tactics used by the police in the interrogation of the defendant.

If the majority is unalterably disposed to simply remand the case despite the Third Circuit's alternative holding, I would reconsider the question although I personally think it is preferable to simply affirm the case on the facts.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

92 11 31 64 A

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 24, 1985

No. 84-5786 Miller v. Fenton

Dear Chief,

Since it is clear at least five others believe the case should be remanded, I too will "go along" with that course of action.

Sincerely,



The Chief Justice

Copies to the Conference

PP. 9

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

From: Justice O'Connor

Circulated: NOV 11 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5786

FRANK M. MILLER, JR., PETITIONER *v.* PETER J. FENTON, SUPERINTENDENT, RAHWAY STATE PRISON, ET AL.

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

[November —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

Under 28 U. S. C. § 2254(d), state-court findings of fact "shall be presumed to be correct" in a federal habeas corpus proceeding unless one of eight enumerated exceptions apply.¹ The question presented is whether the voluntariness of a confession is an issue of fact entitled to the § 2254(d) presumption.

I

On the morning of August 13, 1973 a stranger approached the rural New Jersey home of 17 year old Deborah Margolin and told her that a heifer was loose at the foot of her driveway. She set out alone to investigate and never returned. Later that day, her mutilated body was found in a nearby stream.

¹ In pertinent part, 28 U. S. C. § 2254(d) provides, "In any proceeding instituted in a Federal Court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction . . . shall be presumed to be correct, unless

"(8) . . . the Federal court . . . concludes that such factual finding is not supported by the record as a whole."

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR



November 19, 1985

Re: 84-5786 Miller v. Fenton

Dear Lewis,

Your suggestion is a good one and I will incorporate it in the next circulation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra", is positioned below the word "Sincerely,".

Justice Powell

Stylistic Changes Throughout

pp. 10

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 21

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5786

FRANK M. MILLER, JR., PETITIONER *v.* PETER J.
FENTON, SUPERINTENDENT, RAHWAY
STATE PRISON, ET AL.

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

[November —, 1985]

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"(8) . . . the Federal court . . . concludes that such factual determination is not supported by the record as a whole."