The Burger Court Opinion Writing Database

New Mexico v. Earnest

477 U.S. 648 (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

April 21, 1986

RE: 85-162 - New Mexico v. Earnest

Dear Bill:

I join the April 17 draft of your per curiam.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1986

RE: 85-162 - New Mexico v. Earnest

Dear Bill:

I join your concurring opining dated today.

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.

April 17, 1986

New Mexico v. Earnest
85-162

Dear Bill:

Do we really need anything more than the last sentence of your proposed per curiam, sans the word "therefore"? I think that is the usual form GVR's take, is it not?

As for the per curiam, my worry is that it may be taken as an outright reversal, rather than as an instruction to the state court to review its decision in light of Lee. It seems to me that the cites to Roberts, Inadi, and other cases will simply reinforce the impression that this is a reversal, which of course it is not.

In short, would not the usual form of GVR disposition suffice? I feel strongly on this one.

Sincerely,

WJB, Jr. /JTL

Justice Rehnquist

To the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 30, 1986

New Mexico v. Earnest, 85-162

MEMORANDUM TO THE CONFERENCE

As I indicated at Conference, in my view this case should be a "straight" GVR in light of Lee v. Illinois, 84-6807. If I were to agree with Bill Rehnquist that the case "deserves" more, I would vote to affirm, a result which I believe is clearly mandated by Lee (although in doing so I would reject the reasoning of the Supreme Court of New Mexico).

Sincerely,

Bill

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

WJB
I agree with p.c. per Curiam
W

From: **Justice Brennan**

Circulated: JUN 3 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85–162

NEW MEXICO, PETITIONER *v.* RALPH RODNEY EARNEST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

[June ——, 1986]

PER CURIAM.

We vacate the judgment of the Supreme Court of New Mexico and remand for further proceedings not inconsistent with the opinion in *Lee* v. *Illinois*, *ante*, at ——.

It is so ordered.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1986

85-162

Dear Mr. Chief Justice Designate:

I have before me your current circulation in New Mexico v. Earnest. Although it is an elegant statement, you will not be surprised to hear that I find myself uncomfortable with the light that it casts upon not only Lee, but also Ohio v. Roberts. You say nothing with which I disagree; it is just that I agree more with what you leave out. While Lee did recognize that a state may rebut the inherent unreliability of a codefendant's confession, it also emphasized that in seeking to rebut the "weighty presumption" against admissibility of an accomplice's confession on the grounds that the statements "interlock," the state bears a heavy burden:

"If those portions of the codefendant's purportedly 'interlocking' statement which bear to any significant degree on the defendant's participation in the crime are not thoroughly substantiated by the defendant's own confession, the admission of the statement poses too serious a threat to the accuracy of the verdict to be countenanced by the Sixth Amendment. In other words, when the discrepancies between the statements are not insignificant, the codefendant's confession may not be admitted." Slip Op. at 15.

Of course on the facts of Lee, statements which we characterized as "overlap[p]ing]...to a great extent" ibid. failed to meet this test and we

declared the codefendant's confession to be constitutionally inadmissible.

The hour is late. The case is not of cosmic proportions. The disposition of the Court is a GVR. I would rather not write separately to express my own view of where Confrontation Clause law stands, and wonder if you would be willing to consider a small change in your proposed concurrence. Would you possibly add, on the top of page 2 of your draft right after you cite to Lee, the test that Lee imposes (quoted above in this letter)? Were you to do so, I would be happy to let things lie.

Incidentally, I am delighted that you intend to carry on the tradition that the "Bills" on this Court (Douglas, Brennan, Rehnquist) have consistently adhered to, namely an early reservation to a distant place in the early days of summer. I assure you that no matter how things develop in Earnest, I will not stand between you and your family reunion.

Sincerely,

Bill

Mr. Justice Rehnquist

43

Deny

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

July 1, 1986

MEMORANDUM TO THE CONFERENCE

Cases held for New Mexico v. Earnest, No. 85-162

Deny (1) Earnest v. New Mexico, No. 84-6791. This petition was filed by the respondent in 85-162. It alleges that petitioner's conviction for capital murder, which resulted from a second trial (and which conviction was reversed by the New Mexico Supreme Court on other grounds), violated the double jeopardy clause. There are two distinct components to the claim. First, it is alleged that the trial court erred in terminating the first trial, despite the fact that defense counsel had, concededly, initially made the mistrial motion that the court granted, because counsel subsequently moved to withdraw this mistrial motion. Second, petitioner supports his double jeopardy claim by maintaining that the record reflects that the trial court ordered the mistrial "to avoid having to grant a directed verdict of acquittal." The state supreme court rejected the Fifth Amendment claim on the grounds that the mistrial was, in fact, granted on the defendant's own motion for a mistrial, and because the defense counsel's attempt to withdraw those motions--an attempt which came after the mistrial had been declared-- was

Supreme Court of the United States
Memorandum

----------, 19----------

85-162 T. Dorsey

Dear Bill, (Brennan)

Please join me

Byron

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1986

Re: No. 85-162-New Mexico v. Earnest

Dear Bill:

I agree with your Per Curiam.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

85-162

Supreme Court of the United States
Memorandum

85-162

1 April, 1986

Bill -
Should we have held this case for Lee v. Illinois?
LFP

Yes - & particularly in light of Byron's uncertainty in that case, whether my [illegible] was [illegible] & Court [illegible] [illegible]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 16, 1986

Re: No. 85-162, New Mexico v. Earnest

Dear Bill:

Please join me in your proposed per curiam.

Sincerely,

Harry

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 24, 1986

85-162 New Mexico v. Earnest

Dear Bill:

I agree with your Per Curiam.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1986

85-162 New Mexico v. Earnest

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

85-162

Supreme Court of the United States

Memorandum

85-162

1 April, 1986

Bill –

Should we have held this case for Lee v. Illinois?

HAB

Yes – & particularly in light of Byron's uncertainty in that case whether my conclusions were warranted & Court's [illegible]

?

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

From: **Justice Rehnquist**

Circulated: APR 17 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-162

NEW MEXICO, PETITIONER *v.* RALPH RODNEY EARNEST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

[April ——, 1986]

PER CURIAM.

Respondent Earnest was tried, found guilty by a jury, and sentenced on charges of murder and other offenses in a New Mexico trial court. On appeal the Supreme Court of New Mexico reversed his conviction because of its view that the admission against him of an out-of-court statement of a co-defendant violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment. —— N. M. ——, 703 P. 2d 872 (1985).

The statement in question was a taped declaration by one Phillip Boeglin who, along with respondent and one Perry Connor, was charged with the crimes in question. The State called Boeglin to testify against respondent, but he refused, asserting a Fifth Amendment privilege. The trial court granted Boeglin use immunity, but he persisted in his refusal to testify. Boeglin was held in contempt and excused from the witness stand. The State then offered the taped declaration Boeglin made to police officers shortly after his arrest. Since Boeglin never testified at respondent's trial, nor in any prior proceeding, respondent had no opportunity to cross-examine him about his prior declaration.

The Supreme Court of New Mexico held that under our decision in *Ohio* v. *Roberts*, 448 U. S. 56 (1980), unless there has been a previous opportunity to cross-examine the witness

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 18, 1986

Re: No. 85-162 New Mexico v. Earnest

Dear Bill,

It would have been quite reasonable to simply "hold" this case for Lee v. Illinois, in which case the simple "grant, vacate, and remand" for that case suggested in your letter of April 17th would have been the logical result. But instead we granted the case and heard oral argument in it, and I therefore think it is worth the effort to get something more out of the time we have put into it than the disposition which you propose.

The Supreme Court of New Mexico expressed the view in its opinion in this case that hearsay evidence violated the Confrontation Clause unless there had been a prior opportunity to cross-examine the declarant in some sort of a judicial proceeding. It found support for this view in two cases from the Court of Appeals for the Tenth Circuit, cited in my circulating draft in the present case. I understood from the Conference discussion that a majority thought this view was incorrect, and I think it is appropriate to say so in an opinion dealing with the present case. One could say that implicitly your circulating opinion in Lee v. Ilinois reaches the same conclusion, but it does not say so in so many words. I think a simple grant, vacate, and remand to the Supreme Court of New Mexico in the light of Lee would be considerably less clear in pointing out to that court its mistake than the proposed Per Curiam which I have circulated.

Sincerely,

Justice Brennan

cc: The Conference

REVISIONS THROUGHOUT

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

From: **Justice Rehnquist**

Circulated: APR 23 1986

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85–162

NEW MEXICO, PETITIONER *v.* RALPH RODNEY EARNEST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

[April ——, 1986]

PER CURIAM.

Respondent Earnest was tried, found guilty by a jury, and sentenced on charges of murder and other offenses in a New Mexico trial court. On appeal the Supreme Court of New Mexico reversed his conviction because of its view that the admission against him of an out-of-court statement of a co-defendant violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment. —— N. M. ——, 703 P. 2d 872 (1985).

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The Supreme Court of New Mexico held that under our decision in *Ohio* v. *Roberts*, 448 U. S. 56 (1980), unless there has been an opportunity to cross-examine the witness in an

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 18, 1986

Re: No. 85-162 New Mexico v. Earnest

Dear Chief, Lewis and Sandra,

I have converted my Per Curiam opinion in the above case, which you previously joined, into an opinion concurring in the order remanding the case to the New Mexico Supreme Court. I hope that you will be able to join the opinion in its new form.

Sincerely,

WHR

The Chief Justice
Justice Powell
Justice O'Connor

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

From: **Justice Rehnquist**

JUN 18 1986

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85–162

NEW MEXICO, PETITIONER *v.* RALPH RODNEY EARNEST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

[June ——, 1986]

JUSTICE REHNQUIST, concurring.

I agree that the decision of the Supreme Court of New Mexico should be vacated and the case remanded for further consideration in light of *Lee* v. *Illinois*, —— U. S. —— (1986). The Supreme Court of New Mexico held that the admission against respondent of an out-of-court statement of a codefendant violated respondent's rights under the Confrontation Clause of the Sixth Amendment. The court believed that *Douglas* v. *Alabama*, 380 U. S. 415 (1965), was "directly on point" and mandated the reversal of respondent's conviction because there had been no opportunity for respondent to cross-examine the codefendant, either at the time the statement was made or at trial. —— N. M. ——, ——, 703 P. 2d 872, —— (1985).

As *Lee* v. *Illinois* makes clear, to the extent that *Douglas* v. *Alabama* interpreted the Confrontation Clause as requiring an opportunity for cross-examination prior to the admission of a codefendant's out-of-court statement, the case is no longer good law. Although *Ohio* v. *Roberts*, 448 U. S. 56 (1980), did not attempt to set forth specific standards for constitutional admissibility applicable to all categories of hearsay, see *United States* v. *Inadi*, —— U. S. ——, —— (1986), that decision did establish that a lack of cross-examination is not necessarily fatal to the admissibility of evidence under the Confrontation Clause. See *Lee* v. *Illinois*, —— U. S., at

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 19, 1986

Re: No. 85-162, New Mexico v. Earnest

Dear Bill,

Thank you for your suggestions in the above case. Because Earnest is not an "interlocking confession" case, I am afraid that quoting the language from page 15 of your Lee v. Illinois opinion in the text of my concurrence might confuse the lower courts. If it's all the same to you, therefore, I would prefer to add the Lee v. Illinois language in a footnote, instead of in the text. I would also add the word "weighty" immediately before the word "presumption" on page 2 of my concurrence. Let me know if these changes would satisfy your concerns.

Sincerely,

Justice Brennan

Pp 142

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

From: **Justice Rehnquist**

Circulated: _____

JUN 19 1986

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85–162

NEW MEXICO, PETITIONER *v.* RALPH RODNEY EARNEST

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

[June ——, 1986]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE O'CONNOR join, concurring.

I agree that the decision of the Supreme Court of New Mexico should be vacated and the case remanded for further consideration in light of *Lee* v. *Illinois*, —— U. S. —— (1986). The Supreme Court of New Mexico held that the admission against respondent of an out-of-court statement of a codefendant violated respondent's rights under the Confrontation Clause of the Sixth Amendment. The court believed that *Douglas* v. *Alabama*, 380 U. S. 415 (1965), was "directly on point" and mandated the reversal of respondent's conviction because there had been no opportunity for respondent to cross-examine the codefendant, either at the time the statement was made or at trial. —— N. M. ——, ——, 703 P. 2d 872, —— (1985).

As *Lee* v. *Illinois* makes clear, to the extent that *Douglas* v. *Alabama* interpreted the Confrontation Clause as requiring an opportunity for cross-examination prior to the admission of a codefendant's out-of-court statement, the case is no longer good law. Although *Ohio* v. *Roberts*, 448 U. S. 56 (1980), did not attempt to set forth specific standards for constitutional admissibility applicable to all categories of hearsay, see *United States* v. *Inadi*, —— U. S. ——, —— (1986), that decision did establish that a lack of cross-examination is not necessarily fatal to the admissibility of evidence under

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 12, 1986

Re: 85-162 - New Mexico v. Earnest

Dear Bill:

Please join me.

Respectfully,

JPS

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 23, 1986

No. 85-162 New Mexico v. Earnest

Dear Bill,

I agree with your revised Per Curiam.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 19, 1986

Re: 85-162 New Mexico v. Earnest

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference