



10-1974

Oregon v. Hass

Lewis F. Powell Jr.

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Grant + Revere
Summarily - but
case may not
wait argument.

Ore. S/ct, 4 to 3, failed ^{granted} _{10/8}
to apply Harris when
it reversed a conviction because
statements made to a police officer
were used to impeach Δ

Decision below seems plainly
wrong to me. ~~The~~ Miranda
warning had been given, but
officer continued to ask Qs after Δ
requested a lawyer. Δ's answers were
not used by
State in its case,
& only to impeach
Δ after he
lied in his own
testimony.

PRELIMINARY MEMO

May 17, 1974. Conference
List 1, Sheet 3

No. 73-1492

OREGON

v.

HAAS

Cert to Oregon SC

(en banc, Robinson; Howell,
diss.)

State of Oregon

Title 17

1. SUMMARY: Reep was convicted of bicycle burglary in Oregon state court. The Oregon Court of Appeals reversed because statements made to a police officer were improperly used to impeach his testimony. The Or SC affirmed 4-3. The State of Oregon, patr. claims here that statements made by reep after a Miranda warning but also after he had asked for a lawyer

CFR
Applicability of
Harris is
at issue. I
don't think
Harris is
a sound decision
but there is
a tension between
it and
the Ore Sup Ct's
decision.
B

should have been admitted for impeachment purposes under Harris v. New York, 401 U.S. 222.

2. FACTS: Soon after two bicycles were stolen, resp was picked up by a police officer. After proper Miranda warnings he admitted the theft and said he had given one of them back. He agreed to show the officer where the other one was hidden. On the way resp indicated that he realized he was in trouble and asked to contact a lawyer. The officer said resp could call when they got to the station, but he still wanted to "clear up" the matter. So resp led him to where the bicycle was hidden and pointed out the homes from which the bicycles were stolen.

Before trial the court ruled that resp's statements and actions after he had indicated he wanted a lawyer were inadmissible in the state's case in chief. So the officer testified only as to resp's activities before that time. When resp got on the stand, however, he came up with a story about someone else taking the bicycles, and claimed that he did not know the exact location of the homes which were burglarized. In rebuttal the officer testified that resp had pointed out the houses, and one of the stolen bicycles. Resp objected and the court instructed the jury that this testimony should be considered only for purposes of impeachment.

The Oregon Court of Appeals reversed holding the officer's rebuttal testimony inadmissible under State v. Brewster, 247 Or. 241, 432 P.2d 581, cert denied, 387 U.S. 933 (1967), although it opined that Harris would allow the testimony. The Oregon SC affirmed 4-3. It did not rely on its own Brewster opinion, but held Harris inapplicable because unlike Harris, here resp

Miranda warnings were given. The court reasoned that police are encouraged to give Miranda warnings because they feel, rightly, that they will probably get usable statements from the suspect anyway. However, after the warning police are no longer encouraged to cease questioning when a suspect asks for a lawyer if they can use any subsequent statements for impeachment purposes. Judge Howell in dissent argued that the court's holding gives a defendant license to commit perjury, and conflicts with a North Carolina Supreme Court decision, State v. Bryant, 280 N. C. 551, 187 SE2d 111, and federal decisions where the interrogations violated Escobedo (Wright v. LaVallee, 471 F.2d 123 (CA 2 1972); Padgett v. Russell, 532 F. Supp. 61 (E.D. Pa. 1971).

3. CONTENTIONS: Petr claims that Harris makes this decision wrong. The Oregon SC distinction between Harris, where there was no Miranda warning, and here where there was but the suspect ^{was} questioned after he asked to see a lawyer, is meaningless. The Harris policy of preventing perjury applies to both situations. Petr also argues that the cases noted by the dissent reveal a conflict on the issue.

4. DISCUSSION: Although not entirely clear, it does not appear that there is an independent state ground for the decision. The Oregon Constitution does not contain an explicit guarantee against self-incrimination. The Oregon SC opinion does not mention any Oregon law, and its previous Brewster opinion, on the same issue but pre-Harris, is clearly based upon the U.S. Bill of Rights, and not Oregon law.

Petr is correct that the decision conflicts with Harris, and with other federal and state decisions on the issue. The basis for the decision here is police deterrence, and Harris stands for the proposition that this interest is sufficiently achieved by exclusion of the evidence from the prosecution's case-in-chief. Also, the decision here does allow the defendant to take the stand and perjure himself, something Harris sought to avoid.

There is no response.

Kelly

Oregon SC op appx
A to petr

5/8/74

AF

Conference 10-7-74

Court Ore. Supre Ct.

Voted on..... 19...

Argued 19...

Assigned 19...

No. 73-1452

Submitted 19...

Announced 19...

OREGON, Petitioner

vs.

WILLIAM ROBERT HASS

3/29/74 Cert. filed.

Grant

| | HOLD FOR | CERT. | | JURISDICTIONAL STATEMENT | | | RESULTS | | MOTION ASENT | | NOT VOTING | |
|----------------|----------|-------|---|--------------------------|------|-----|---------|-----|--------------|---|------------|---|
| | | G | D | S | POST | DIS | APP | REV | APP | G | | D |
| Rehnquist, J. | | ✓ | ✓ | | | | | | | | | |
| Powell, J. | | ✓ | ✓ | | | | | | | | | |
| Blackmun, J. | | ✓ | ✓ | | | | | | | | | |
| Marshall, J. | | ✓ | ✓ | | | | | | | | | |
| White, J. | | ✓ | ✓ | | | | | | | | | |
| Stewart, J. | | | ✓ | | | | | | | | | |
| Brennan, J. | | | ✓ | | | | | | | | | |
| Douglas, J. | | | ✓ | | | | | | | | | |
| Burger, Ch. J. | | | | | | | | | | | | |

Jan 3

BENCH MEMORANDUM

TO: Mr. Justice Powell

FROM: Joel Klein

DATE: January 16, 1975

No. 73-1452 Oregon v. Hass

After Harris v. New York, the constitutional question in this case is an easy one. The Oregon Supreme Court sought to distinguish Harris on the ground that in this case the defendant was given his Miranda warnings and requested a lawyer. In this situation, the police have "nothing to lose and something to gain by violating Miranda." In Harris, where no warnings were given, a far more ambiguous situation existed since if the police gave the warnings they might have been able to get a valid confession. This distinction, however, ignores Harris' rationale which is to prevent Miranda's shield from becoming a cloak for perjury. That rationale controls this case. As to the deterrent effect, such as it is, Harris chose to forego that effect rather than sanction the possibility of perjury.

The only other issue ^{*} in the case regards the

* Respondent also asserts that his statements were involuntary and therefore, Harris does not apply. These statements, however, were plainly "voluntary" ^(under) the pre-Miranda standards.

question of whether the Oregon Supreme Court grounded its decision solely on the federal constitution. Its opinion certainly reads as ^{if} it ~~does~~ ^{did}. Nevertheless, the Court intimates that Oregon, like several other States, may not follow Harris as a matter of State law. This, it is plainly entitled to do. Hence, I would suggest that if the Court reverses, it make clear that the Oregon Supreme Court may still hold, under state law, that the testimony at issue is inadmissible.

Argued 1/21/75

Revered
(I think should
not have
taken
concern,
even
if this
was wrongly
decided)

One S/Ct, 4 to 3, refused to follow Harris,
distinguishing Harris on ground. That here
Miranda warnings were given + no interrogation
was used. ~~and~~ after Δ said he wanted a lawyer.

In Harris no warnings were given,
but ~~the~~ incriminating statements (voluntarily under
the Miranda standard) were voluntary.

No basis for a distinction.

Of course, one may apply under its
own law a higher standard.

Op of Ore. Ct. rests primarily on U.S. Const.

Denny (Ant A/G Oregon)

Nothing new

McKeon (Resp)

Argued State can't appeal

" State law - not Fed law -

was basis of decision.

The Chief Justice Reversed

Attempt to distinguish
Harris makes no sense.

State can't impose
strictly ~~state~~
standards if it wishes
but can't mirror
Fed. Court as construed
in Harris.

Douglas, J.

Orit

Brennan, J. 5-1 Con or App in

Not clear that Ore
decided this case on
Fed. grounds (Kovach)

If we reach merits,
distinction drawn
by Ore Ct is justified.

Stewart, J. Reversed

Clear Ore. Ct based
its decision on ~~the~~ Fed
Court. Ore Ct. thought
Harris not applicable.

No basis for
distinguishing Harris

White, J. Reverse

Harris ^{control} ~~entry~~

Reverse

Marshall, J. DI Do Affirm

DI Do Affirm

Blackmun, J. Reverse

Powell, J. Reverse

No basis for
distinguishing Harris

Rehnquist, J. Reverse

March 6, 1975

No. 73-1452 Oregon v. Hays

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Sally - Do join for me
Supreme Court of the United States
Washington, D. C. 20543 *in this*

CHAMBER OF
JUSTICE HUTCHINSON

March 6, 1975

73-1452 - Oregon v. Haas

Dear Harry,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

*23
1-3
/*

Mr. Justice Blackmun .

Copies to the Conference

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

CHARLES W.
JUSTICE BYRON R. WHITE

March 6, 1975



Re: No. 73-1457 - Oregon v. Hass

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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

CHIEF OF
JUSTICE WILLIAM H. REHNOLST

March 30, 1975

Re: No. 73-1457 - Oregon v. Hass

Dear Harry:

Please join me.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference

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

CLERK OF
JUSTICE Wm. J. BRENNAN, JR.

March 14, 1975



RE: No. 73-1452 Oregon v. Lass

Dear Thurgood:

Please join me in your dissenting opinion in
the above.

Sincerely,

A handwritten signature, appearing to be "Bill", is written in cursive below the word "Sincerely,".

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

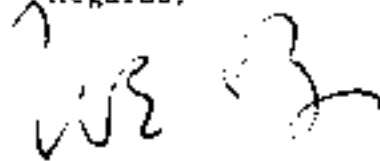
March 14, 1975

Re: No. 73-1452 - Oregon v. Hass

Dear Harry:

I join your proposed opinion dated March 10, 1975.

Regards,

Handwritten signature of Warren E. Burger, consisting of the letters 'W', 'E', and 'B' in a stylized, cursive script.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE THOMAS MARSHALL

March 17, 1975

Re: No. 73-1452 -- Oregon v. Hass

Dear Bill:

Please join me in your dissent.

Sincerely,


T. M.

Mr. Justice Brennan

cc: The Conference

DATE TIME W. S. F. S. M. F. S. B. T. S. W. M. JI

Join H/A/B
3-14-75

Discont
3-6-75
Join TM
3-14-75

Join H/A/B
3-6-75

Join H/A/B
3-6-75

discont
1st Dept
2/10/75
Join W/B
3-17-75

1st Dept
2/16/75

Join H/A/B
3/6/75

Join A
3-10-

1/23/75