

The Burger Court Opinion Writing Database

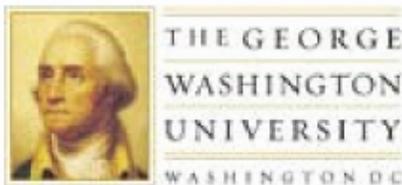
Whiteley v. Warden, Wyoming State Penitentiary

401 U.S. 560 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



April 21, 1970

MEMORANDUM TO THE CONFERENCE

**Re: No. 1468 Misc. - Whiteley v.
Warden of Wyoming State
Penitentiary**

Dear Brethren:

Brother White's dissent to the proposed denial of certiorari in this case convinces me that my Conference vote to deny was wrong. I shall therefore change my vote to grant.

Sincerely,

J. M. H.

*Read but I am still
to deny*

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: White, J.

Circulated: 4-20-70

Recirculated: _____

**WHITELEY v. WARDEN OF THE WYOMING
STATE PENITENTIARY**

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

No. 1468, Misc. Decided April —, 1970

MR. JUSTICE WHITE, dissenting from denial of
certiorari.

Petitioner was arrested by a police officer acting on the basis of a statewide police radio broadcast describing petitioner and stating that he was wanted for burglary. Incident to this arrest, petitioner's car was searched and items linking petitioner to a recent burglary were found. These items were introduced against petitioner at his trial.

The police radio broadcast was made after the sheriff of another county had obtained an arrest warrant on the basis of his signed complaint charging petitioner and another with burglary. At trial, the sheriff testified that the complaint was based on a "tip." At no time—neither at trial, nor on appeal, nor in state and federal post-conviction proceedings—has the State ever shown that the source of this "tip" was known to be reliable and gave the sheriff the basis for his conclusion that petitioner had committed burglary.

On this record, I cannot conclude that the state authorities had probable cause to arrest petitioner. It was not of course necessary for the arresting officer himself to know facts adding up to probable cause for arrest; he could properly rely on the radio broadcast. But if the arresting officer did not himself have probable cause, it was necessary that the broadcast be based on probable cause. A mere "tip" might have justified a stop and

To: The Chief Justice
✓ Mr. Justice Black
Mr. Justice Douglas
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joins, dissenting from denial of certiorari.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 21, 1970

Re: No. 1468 Misc. - Whiteley v. Warden

Dear Byron:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice White

cc: The Conference