

The Burger Court Opinion Writing Database

Combs v. United States

408 U.S. 224 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

June 19, 1972

CHAMBERS OF
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE:

No. 71-517 -- Combs v. United States

The per curiam disposition of the above case became more "sticky" as I went along. First, I thought I would ignore the Solicitor General's suggestion about modifying Jones, but concluded this was not feasible.

I particularly call your attention, at this busy season, to Note 4 and the treatment which it supports.

Regards,

WEP

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice
Circulated: JUN 19 1972

Recirculated: _____

No. 71-517 -- Combs v. United States

PER CURIAM

We granted certiorari on claims that evidence introduced against petitioner was obtained through an unlawful search that petitioner has standing to challenge. The Government now suggests that the warrant authorizing the search was invalid, but that further factual determinations are required to resolve the question of petitioner's standing to challenge the admission in evidence of the alleged stolen goods seized by government agents.

1/
Petitioner and his father were convicted after a joint trial under an 2/
indictment charging them with having violated 18 U.S.C. § 659 by receiving,

1/
Both men were convicted, but petitioner's father did not appeal; another codefendant at the trial was petitioner's brother, who was acquitted on a related charge.

2/
Section 659 provides as follows:

"Whoever . . . unlawfully takes, carries away, or conceals or by fraud or deception obtains from any . . . railroad car . . . or other vehicle, or from any . . . station house, platform or depot . . . with intent to convert to his own use any goods or chattels moving as or which are a part of . . . an interstate or foreign shipment . . . ; or

"Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; . . .

* * * *

(footnote continued)

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

CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1972

You have not voted.
You have joined Chief + PD

Please give me

Re: No. 71-517 - Combs v. United States

Memorandum to the Conference:

Potter Stewart's memorandum today suggests that we take this occasion to state that the primary holding in Jones does not apply to a seizure of stolen property.

A slight revision of the footnote, as he suggests, would accomplish this.

Will those who agree with Potter's view please advise me?

Regards,

WSB

See pencilled change - p. 4

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: The Clerk Justice

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-517

Recirculated: JUN 22 1972

Elisha Combs, Petitioner, | On Writ of Certiorari to the
v. | United States Court of Appeals for the Sixth Circuit.
United States. |

[June —, 1972]

PER CURIAM.

We granted certiorari on claims that evidence introduced against petitioner was obtained through an unlawful search that petitioner has standing to challenge. The Government now suggests that the warrant authorizing the search was invalid, but that further factual determinations are required to resolve the question of petitioner's standing to challenge the admission in evidence of the alleged stolen goods seized by government agents.

Petitioner and his father were convicted after a joint trial¹ under an indictment charging them with having violated 18 U. S. C. § 659² by receiving, possessing, and

¹ Both men were convicted, but petitioner's father did not appeal; another codefendant at the trial was petitioner's brother, who was acquitted on a related charge.

² Section 659 provides as follows:

"Whoever . . . unlawfully takes, carries away, or conceals or by fraud or deception obtains from any . . . railroad car . . . or other vehicle, or from any . . . station house, platform or depot . . . with intent to convert to his own use any goods or chattels moving as or which are a part of . . . an interstate or foreign shipment . . . ; or

"Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; . . .

"Shall . . . be fined not more than \$5,000 or imprisoned not more than ten years, or both . . ."

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

CHAMBERS OF
THE CHIEF JUSTICE

June 26, 1972

Re: No. 71-517 - Combs v. United States

Dear Bill:

Your message that Bill Douglas concurred only in the result arrived in time to announce it this morning but it did not show on the print-out. It will show on the Slip Opinion.

Regards,

WJ

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 20, 1972

RE: No. 71-517 - Combs v. United States

Dear Chief:

I agree with the Per Curiam you have
prepared in the above.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 21, 1972

RE: No. 71-517 - Combs v. United States

Dear Chief:

I would have trouble joining your Per Curiam if you make Potter's suggested change. The question was not addressed by the Court of Appeals and I'm so uncertain at this late time of the year how I'd come out, that I prefer your present disposition which leaves it to the Court of Appeals to decide in the first instance, if necessary. The Court of Appeals may not reach it if it finds standing under the second of the Jones rules.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 20, 1972

71-517, Combs v. United States

Dear Chief,

I had rather thought it was of some importance to establish in this case that "the first alternative holding of Jones" is inapplicable to stolen property. I think this could quite easily be said in a revised footnote 4. Otherwise, the Per Curiam you have circulated seems to me quite satisfactory.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 20, 1972

Re: No. 71-517 - Combs v. U. S.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 21, 1972

Re: No. 71-517 - Combs v. United States

Dear Chief:

At this late date, I would leave your opinion as it is and perhaps grant Brown, No. 71-6193, one of the held cases covered in your memorandum.

Sincerely,



The Chief Justice

Copies to Conference



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1972

Re: No. 71-517 - Combs v. United States

Dear Chief:

Please join me.

Sincerely,


T.M.

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

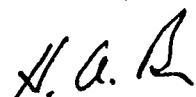
June 20, 1972

Re: No. 71-517 - Combs v. U. S.

Dear Chief:

I am glad to join your proposed Per
Curiam.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

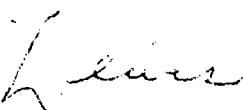
June 21, 1972

Re: 71-517 Combs v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 21, 1972

Re: No. 71-517 - Combs v. United States

Dear Chief:

Please join me in the Per Curiam opinion which you have prepared. I also agree with Potter's view that footnote 4 should be revised as he has indicated in his memorandum to the Conference dated June 20th.

Sincerely,



The Chief Justice

Copies to the Conference