

The Burger Court Opinion Writing Database

Cady v. Dombrowski

413 U.S. 433 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1973

Re: No. 72-586 - Cady v. Dombrowski

Dear Bill:

Please join me.

Regards,

WSR

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 14, 1973

Dear Bill:

Please join me in your dissent in
72-586, Cady v. our old friend and constant
litigant Mr. Dombrowski.

WJD
William O. Douglas

Mr. Justice Brennan

cc: The Conference

9
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 6, 1973

RE: No. 72-586 Cady v. Dombrowski

Dear Bill:

I shall in due course circulate a
dissent in the above.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

SUPREME COURT OF THE UNITED STATES

No. 72-586

From: Brennan, J.

Circulated: 6-14-73

Elmer O. Cady, Warden,
Petitioner,

v.

Chester J. Dombrowski

Recirculated: _____

) On Writ of Certiorari to the
United States Court of Ap-
peals for the Seventh Circuit.
)

[June , 1973]

MR. JUSTICE BRENNAN, dissenting.

In upholding the warrantless search of respondent's rented

Thunderbird, the Court purports merely to rely on our prior decisions

dealing with automobile searches. It is clear to me, however, that

nothing in our prior decisions supports either the reasoning or the result

of the Court's decision today. I therefore dissent and would hold the

Search of the Thunderbird unconstitutional under the Fourth and Fourteenth

Amendments.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-586

From: Brennan, J.

Elmer O. Cady, Warden, Petitioner, v. Chester J. Dombrowski, On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. Circulated: 6-18-73

[June 21, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL join, dissenting.

In upholding the warrantless search of respondent's rented Thunderbird, the Court purports merely to rely on our prior decisions dealing with automobile searches. It is clear to me, however, that nothing in our prior decisions supports either the reasoning or the result of the Court's decision today. I therefore dissent and would hold the search of the Thunderbird unconstitutional under the Fourth and Fourteenth Amendments.

The relevant facts are these. Respondent, an off-duty Chicago policeman, was arrested by police on a charge of drunken driving following a one-car automobile accident in which respondent severely damaged his rented 1967 Thunderbird. The car was towed from the scene of the accident to a private garage and, some two and one-half hours later, one of the arresting officers drove to the garage and, without a search warrant or respondent's consent, conducted a thorough search of the car for the alleged purpose of finding respondent's service revolver which was not on respondent's person and had not been found during an initial search of the car at the scene of the accident. In the trunk of the car, the officer found and seized numerous items that eventually linked respondent to the death of one Herbert McKinney and

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 15, 1973

72-586, Cady v. Dombrowski

Dear Bill,

Please add my name to your dissenting
opinion.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

D

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1973

Re: No. 72-586 - Cady v. Dombrowski

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 15, 1973

Re: No. 72-586 - Cady v. Dombrowski

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 11, 1973

Re: No. 72-586 - Cady v. Dombrowski

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

9

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1973

No. 72-586 Cady v. Dombrowski

Dear Bill:

Please join me.

Sincerely,

L. C. Rehnquist

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

1 The Chief Justice
Mr. Justice Douglass
Mr. Justice Brandeis
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Warren
Mr. Justice Black
Mr. Justice Stone

1st DRAFT

Perry Rehnquist, Jr.

SUPREME COURT OF THE UNITED STATES

No. 72-586

卷之三

Elmer O. Cady, Warden, Petitioner,
v.
Chester J. Dombrowski. } On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit.

[June —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Charles Dombrowski was convicted in a Wisconsin state court of first degree murder of Herbert McKinney and sentenced to life imprisonment. The conviction was upheld on appeal, *State v. Dombrowski*, 44 Wis. 2d 486 (1969), the Wisconsin Supreme Court rejecting respondent's contention that certain evidence admitted at the trial had been unconstitutionally seized. Respondent then filed a petition for a writ of habeas corpus in federal district court, asserting the same constitutional claim. The District Court denied the petition but the United States Court of Appeals for the Seventh Circuit reversed, holding that one of the searches was unconstitutional under *Preston v. United States*, 376 U. S. 354 (1964), and the other unconstitutional for unrelated reasons. We granted certiorari, 409 U. S. 1059 (1972).

I

On September 9, 1969, respondent was a member of the Chicago, Illinois, police force and either owned or possessed a 1960 Dodge automobile. That day he drove from Chicago to West Bend, Wisconsin, the county seat of Washington County located some hundred-odd miles

27, 8, 9, 10, 11, 12, 14, 15, 17

The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
X Mr. Justice Powell

2nd DRAFT

From REHNQUIST, J.

SUPREME COURT OF THE UNITED STATES

Argued: _____

No. 72-586

Decided: 6/7

Elmer O. Cady, Warden, Petitioner
v.
Chester J. Dombrowski, Respondent
On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[June --, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Charles Dombrowski was convicted in a Wisconsin state court of first degree murder of Herbert McKinney and sentenced to life imprisonment. The conviction was upheld on appeal, *State v. Dombrowski*, 44 Wis. 2d 486 (1969), the Wisconsin Supreme Court rejecting respondent's contention that certain evidence admitted at the trial had been unconstitutionally seized. Respondent then filed a petition for a writ of habeas corpus in federal district court, asserting the same constitutional claim. The District Court denied the petition but the United States Court of Appeals for the Seventh Circuit reversed, holding that one of the searches was unconstitutional under *Preston v. United States*, 376 U. S. 354 (1964), and the other unconstitutional for unrelated reasons. We granted certiorari. 409 U. S. 1059 (1972).

On September 9, 1969, respondent was a member of the Chicago, Illinois, police force and either owned or possessed a 1960 Dodge automobile. That day he drove from Chicago to West Bend, Wisconsin, the county seat of Washington County located some hundred-odd miles

8, 10, 11, 12

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-586

Elmer O. Cady, Warden, } On Writ of Certiorari to the
Petitioner, } United States Court of
v. } Appeals for the Seventh
Chester J. Dombrowski. } Circuit.

[June —, 1973]

MR. JUSTICE REHNQVIST delivered the opinion of the Court.

Respondent Charles Dombrowski was convicted in a Wisconsin state court of first degree murder of Herbert McKinney and sentenced to life imprisonment. The conviction was upheld on appeal, *State v. Dombrowski*, 44 Wis. 2d 486 (1969), the Wisconsin Supreme Court rejecting respondent's contention that certain evidence admitted at the trial had been unconstitutionally seized. Respondent then filed a petition for a writ of habeas corpus in federal district court, asserting the same constitutional claim. The District Court denied the petition but the United States Court of Appeals for the Seventh Circuit reversed, holding that one of the searches was unconstitutional under *Preston v. United States*, 376 U. S. 354 (1964), and the other unconstitutional for unrelated reasons. We granted certiorari, 409 U. S. 1059 (1972).

1

On September 9, 1969, respondent was a member of the Chicago, Illinois, police force and either owned or possessed a 1960 Dodge automobile. That day he drove from Chicago to West Bend, Wisconsin, the county seat of Washington County located some hundred-odd miles

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 18, 1973

Re: No. 72-586 - Cady v. Dombrowski

Dear Harry:

Gordon Harriss, one of my law clerks, prepared this draft statement for the announcement of Cady v. Dombrowski on Thursday. Feel free to make any revisions in it which you wish, and again my thanks for helping me out.

Sincerely,

Blu

Mr. Justice Blackmun

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1973

MEMORANDUM TO THE CONFERENCE

Re: Case Held for Cady v. Dombrowski, No. 72-586

In Thomas v. Washington, 72-1023, petitioner, while driving a car early one morning, was stopped by police officers for speeding. A radio check disclosed that there were several traffic warrants outstanding for petitioner's arrest because of his failure to respond to previous citations. Petitioner was therefore arrested. There were two other passengers in the car, but neither had a valid driver's license. The police decided that the car would have to be impounded as it was located on a "major thoroughfare" and neither of the persons in the car could legally remove it. Petitioner does not contend that impoundment was improper in this circumstance. A wrecker was called to tow the car away. After the car had been initially stopped, the police noticed that a credit card laying on the dashboard bore a name different from any of the occupants; in addition, "numerous" jewelry price tags were visible in the car. Petitioner was taken to jail; the trunk of the car was searched at the scene (and apparently later at the police impound) and four ladies' suits, later determined to have been stolen, were discovered. Petitioner was convicted of grand larceny by possession, and he contends that the dresses were unconstitutionally seized during the warrantless search of the trunk. The Washington appellate court ruled that the "inventory search" of the trunk was not unreasonable as, from the presence of the price tags, the police had a reasonable basis for believing that there were valuable items in the car, and the "inventory" was "necessary to protect the owner of the car, and the police, and the towing company from claims and loss of property."

- 2 -

As the car was lawfully within police custody, and could properly be impounded, the only question is whether the justification for the intrusion was reasonable under the circumstances. Though here there was, unlike Cady, no finding below as to the specific motivation for the search, and the justification for the intrusion into the trunk was different from that deemed reasonable in Cady, there are nonetheless substantial similarities between this case and Cady. I will vote to deny the petition on the authority of Cady and Harris v. United States, 390 U.S. 234 (1968).

Sincerely,

whg

WB