

The Burger Court Opinion Writing Database

Cardwell v. Lewis

417 U.S. 583 (1974)

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

CHAMBERS OF
THE CHIEF JUSTICE

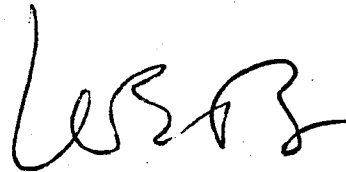
June 6, 1974

Re: No. 72-1603 - Harold J. Cardwell v. Arthur Ben Lewis

Dear Harry:

Please join me, except as to Part IV.

Regards,

A handwritten signature in dark ink, appearing to be "LFP", written in a cursive style.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

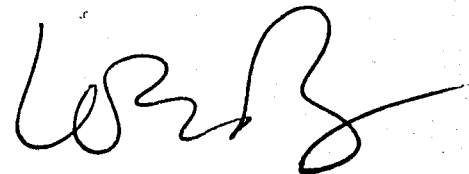
June 13, 1974

Re: 72-1603 - Cardwell v. Lewis

Dear Harry:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to be "W. E. Burger", written in a cursive style.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 2, 1974

Dear Father:

Would you like to undertake the
disposit in 72-1603, Cardwell v. Lewis?

WVW
William O. Douglas

Mr. Justice Stewart

Dear Father

would you like to
undertake the disposit in
72-1603 Cardwell v
Lewis?

WVW

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 12, 1974

Dear Potter:

In 72-1603, Cardwell v. Lewis, please
join me in your dissent.


William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 12, 1974

RE: No. 72-1603 Cardwell v. Lewis

Dear Potter:

Please join me in your dissenting
opinion in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 2, 1974

Re: No. 72-1603, Cardwell v. Lewis

Dear Bill,

I shall be glad to undertake a dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Douglas

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 29, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1603, Cardwell v. Lewis

I expect to circulate a dissenting
opinion in this case in due course.

75.
P. S.

Have you ml

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1603

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

From: Stewart, J.

Circulated: JUN 12 1974

Harold J. Cardwell, Warden, } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Sixth
Arthur Ben Lewis. } Circuit.

[June —, 1974]

MR. JUSTICE STEWART, dissenting.

The most fundamental rule in this area of constitutional law is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U. S. 347, 357; *Coolidge v. New Hampshire*, 403 U. S. 443, 454-455. See also *Camara v. Municipal Court*, 387 U. S. 523, 528-529. Since there was no warrant authorizing the search and seizure in this case, and since none of the "specifically established and well-delineated exceptions" to the warrant requirement here existed, I am convinced the judgment of the Court of Appeals must be affirmed.¹

In casting about for some way to avoid the impact of our previous decisions, the plurality opinion first suggests, *ante*, at 4-5, that no "search" really took place in this case, since all that the police did was to scrape paint from the respondent's car and make observations of its tires. Whatever merit this argument might possess in

¹ This dissent is directed toward the search-and-seizure analysis in MR. JUSTICE BLACKMUN's plurality opinion. Like the plurality, I find it inappropriate to consider the issue raised by MR. JUSTICE POWELL's concurrence, it having been neither briefed nor argued by the parties.

To: The Chief Justice
Mr. Justice Brennan ✓
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 72-1603

Circulated: _____

Harold J. Cardwell, Warden, } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Sixth
Arthur Ben Lewis. } Circuit.

Recirculated: JUN 14 1974

[June —, 1974]

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

The most fundamental rule in this area of constitutional law is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U. S. 347, 357; *Coolidge v. New Hampshire*, 403 U. S. 443, 454–455. See also *Camara v. Municipal Court*, 387 U. S. 523, 528–529. Since there was no warrant authorizing the search and seizure in this case, and since none of the "specifically established and well-delineated exceptions" to the warrant requirement here existed, I am convinced the judgment of the Court of Appeals must be affirmed.¹

In casting about for some way to avoid the impact of our previous decisions, the plurality opinion first suggests, *ante*, at 4–5, that no "search" really took place in this case, since all that the police did was to scrape paint from the respondent's car and make observations of its

¹ This dissent is directed toward the search-and-seizure analysis in MR. JUSTICE BLACKMUN's plurality opinion. Like the plurality, I do not consider the issue raised by MR. JUSTICE POWELL's concurrence, it having been neither briefed nor argued by the parties.

72-1603

Supreme Court of the United States

Memorandum

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

Henry
John
in face of
in things
Cardwell, 1901

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

CHAMBERS OF
JUSTICE BYRON R WHITE

May 30, 1974

Re: No. 72-1603 - Cardwell v. Lewis

Dear Harry:

I join your opinion except for Part IV.
I would hope you could drop it, but if you
prefer to keep it, I shall probably add a brief
statement.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 13, 1974

Re: No. 72-1603 -- Harold J. Cardwell v. Lewis

Dear Potter:

Please join me in your dissent.

Sincerely,

J.M.
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1974

Re: No. 72-1603 - Cardwell v. Lewis

Dear Lewis:

I am circulating this case today. A number of changes, however, have been made from the first draft I gave you last Friday. I mention this so that in your writing you will make reference to the second rather than the first draft.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Powell

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

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5/29/74

No. 72-1603

Recirculated: _____

Harold J. Cardwell, Warden, } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Sixth
Arthur Ben Lewis. } Circuit.

[May —, 1974]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue of the legality, under the Fourth and Fourteenth Amendments, of a warrantless seizure of an automobile and the examination of its exterior at a police impoundment area after the car had been removed from a public parking lot.

Evidence obtained upon this examination was introduced at the respondent's state court trial for first-degree murder. He was convicted. The Federal District Court, on a habeas application, ruled that the examination was a search violative of the Fourth and Fourteenth Amendments. 354 F. Supp. 26 (SD Ohio 1972). The United States Court of Appeals for the Sixth Circuit affirmed. 476 F. 2d 467 (1973). We granted certiorari, 414 U. S. 1062 (1973), and now conclude that, under the circumstances of this case, there was no violation of the protection afforded by the Amendments.

I

In 1968 respondent Arthur Ben Lewis, Jr., was tried and convicted by a jury in an Ohio state court for the first-degree murder of Paul Radcliffe. On appeal, the Supreme Court of Ohio affirmed the judgment of con-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 6, 1974

Dear Lewis:

Re: No. 72-1603 - Cardwell v. Lewis

Thank you for your note of today with a
copy of your proposed opinion concurring in the result.

I shall be glad to add the note you suggest
as footnote 12 at the end of the opinion. I shall elim-
inate the present Part IV.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line extending from the end of the signature.

Mr. Justice Powell

June 7, 1974

Dear Chief:

Re: No. 72-1603 - Cardwell v. Lewis

This draft eliminates Part IV, as I had expected to do, and adds a final footnote 12 to accommodate Lewis in his forthcoming short concurrence based on Schneckloth.

Sincerely,

HAB

The Chief Justice

June 7, 1974

Dear Byron:

Re: No. 72-1603 - Cardwell v. Lewis

I hope that this draft will be more to your liking. You will observe that it drops Part IV and adds a final footnote 12, which will accommodate Lewis in his forthcoming short concurrence based on Schneckloth.

Sincerely,

HAB

Mr. Justice White

44 P. 19, 12

For The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 72-1603

Circulated: _____

Recirculated: 11/9/74

Harold J. Cardwell, Warden, } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Sixth
Arthur Ben Lewis. } Circuit.

[May —, 1974]

MR. JUSTICE BLACKMUN announced the judgment of the Court and an opinion in which the CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST join.

This case presents the issue of the legality, under the Fourth and Fourteenth Amendments, of a warrantless seizure of an automobile and the examination of its exterior at a police impoundment area after the car had been removed from a public parking lot.

Evidence obtained upon this examination was introduced at the respondent's state court trial for first-degree murder. He was convicted. The Federal District Court, on a habeas application, ruled that the examination was a search violative of the Fourth and Fourteenth Amendments. 354 F. Supp. 26 (SD Ohio 1972). The United States Court of Appeals for the Sixth Circuit affirmed. 476 F. 2d 467 (1973). We granted certiorari, 414 U. S. 1062 (1973), and now conclude that, under the circumstances of this case, there was no violation of the protection afforded by the Amendments.

I

In 1968 respondent Arthur Ben Lewis, Jr., was tried and convicted by a jury in an Ohio state court for the first-degree murder of Paul Radcliffe. On appeal, the Supreme Court of Ohio affirmed the judgment of con-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

June 6, 1974

No. 72-1603 Cardwell v. Lewis

Dear Harry:

In view of my views as to the warrant clause (see Almeida-Sanchez), I have concluded reluctantly that I should not join your opinion for the Court.

I will, however, concur in the result if you will be good enough to add a note along the following lines:

"We do not address the question found to be determinative in Mr. Justice Powell's concurring opinion. This question was not raised or briefed by the parties."

You will find a somewhat similar explanation in note 38 of Potter's opinion in Schneckloth, 412 U.S. at 249.

If we deal with Schneckloth in this manner, I can preserve my position and then you will be free to remove Part IV from your opinion, as I understand Byron wishes.

Sincerely,

Mr. Justice Blackmun

lfp/ss

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1603

From: Powell, J.

Circulated: JUN 7 1974

Harold J. Cardwell, Warden, } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Sixth
Arthur Ben Lewis. } Circuit.

Recirculated: _____

[June —, 1974]

MR. JUSTICE POWELL, concurring in the result.

I would reverse the judgment of the Court of Appeals for the reasons set forth in my concurring opinion in *Schneckloth v. Bustamonte*, 412 U. S. 218, 250 (1973). As stated therein, I would hold that "federal collateral review of a state prisoner's Fourth Amendment claims—claims which rarely bear on innocence—should be confined solely to the question of whether the petitioner was provided a fair opportunity to raise and have adjudicated the question in state courts." *Id.*, at 250. In this case there is no contention that petitioner was denied a full and fair opportunity to litigate his claim in the state courts.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1974

Re: No. 72-1603 - Cardwell v. Lewis

Dear Harry:

Please join me in the opinion for the Court you have prepared in this case.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference