The Burger Court Opinion Writing Database

United States v. Robinson

414 U.S. 218 (1973)

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

November 15, 1973

PERSONAL

Re: 72-936 - U. S. v. Robinson

Dear Bill:

I enclose several comments on pages 9 and 17 of your very good opinion in this case. Some judges have exploited reasonably clear statements to their own ends. The device was to say, "This is ambiguous; all ambiguities are to be resolved favorably to the accused, ergo, etc." I like to tie them down when it is as clear as this case.

Regards,

WEB

Mr. Justice Rehnquist

turned out to be a "crumpled up cigarette package." Jenks testified that at this point he still did not know what was in the package:

> "As I felt the package I could feel objects in the package but I couldn't tell what they were . . . . I knew they weren't cigarettes."

The officer then opened the cigarette pack and found 14 gelatin capsules of white powder which he thought to be, and which later analysis proved to be, heroin. Jenks then continued his search of respondent to completion, feeling around his waist and trouser legs, and examining the remaining pockets. The heroin seized from the respondent was admitted into evidence at the trial which resulted in his conviction in the District Court.

The opinion for the plurality judges of the Court of Appeals, written by Judge Wright, the concurring opinion of Chief Judge Bazelon, and the opinion for the dissenting judges, written by Judge Wilkey, gave careful and comprehensive treatment to the authority of a police officer to search the person of one who has been validly arrested and taken into custody. We conclude that the search conducted by Jenks in this case did not offend the limits imposed by the Fourth Amendment, and we therefore reverse the judgment of the Court of Appeals.

I

It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment. This general exception has historically been formulated into two distinct propositions. The first is that a search may be made of the *person* of the arrestee by virtue of the lawful arrest. The second is that a search may be made of the area within the control of the arrestee.

Bill This is in yo[ur] opinion, I concede it is a nuance th[at] escapes most read[ers] and I submit for[?] ... WEB

(9) Stand repeats — and it leads into the next ¶

driving while one's license is revoked. Since there would be no further evidence of such a crime to be obtained in a search of the arrestee, the Court held that only a search for weapons could be justified. However,

[there is no basis ~~it is unwarranted~~ to carry over a probable cause arrest the limitation this Court put on a stop-frisk search is permissible without probable cause.]

Terry v. *Ohio, supra,* did not involve an arrest for probable cause, and it made quite clear that the "protective frisk" for weapons which it approved might be conducted without probable cause. 392 U. S., at 21–22, 24–25. The Court's opinion explicitly recognized that there is a "distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons":

> "The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, *Preston* v. *United States,* 376 U. S. 364, 367 (1964), is also justified on other grounds, *ibid.,* and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. *Warden* v. *Hayden,* 387 U. S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring). Thus it [the stop-and-frisk] must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search even though it remains a serious intrusion.
>
> ". . . An arrest is a wholly different type of intrusion upon the individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in hav-

Note
It was the opaqueness of parts of Terry that gave CADC its "handle" — as Harlan predicted. WEB

The issue was apparently litigated in the English courts in *Dillon* v. *O'Brien,* 16 Cox C. C. 245 (Exch. Ireland, 1887), cited in *Weeks* v. *United States, supra,* There Baron Palles said:

> "But the interest of the state in the person charged being brought to trial in due course necessarily extends, as well to the preservation of material evidence of his guilt or innocence, as to his custody for the purpose of trial. His custody is of no value if the law is powerless to prevent the abstraction or destruction of this evidence, without which a trial would be no more than an empty forum. But if there be a right to production or preservation of this evidence, I cannot see how it can be enforced otherwise than by capture." 16 Cox C. C. 245, 250.

Spalding v. *Preston,* 21 Vt. 9 (1848), represents an early holding in this country that evidence may be seized from one who is lawfully arrested. In *Closson* v. *Morrison,* 47 N. H. 484 (1867), the Court made the following statement:

> "We think that an officer would also be justified in taking from a person whom he has arrested for crime, any deadly weapon he might find upon him, such as a revolver, a dirk, a knife, a sword cane, a slung shot, or a club, though it had not been used or intended to be used in the commission of the offense for which the prisoner had been arrested, and even though no threats of violence towards the officer had been made. A due regard for his own safety on the part of the officer, and also for the public safety, would justify a sufficient search to ascertain if such weapons were carried the person of the prisoner, or were in his possession, and if found, to seize and hold them until the prisoner should be discharged, or until they can other-

decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

IV

The search of respondent's person conducted by Officer Jenks in this case and the seizure from him of the heroin, were permissible under established Fourth Amendment law. While thorough, the search partook of none of the extreme or patently abusive characteristics which were held to violate the Due Process Clause of the Fourteenth Amendment in *Rochin* v. *California*, 342 U. S. 165 (1952). Since it is the fact of custodial arrest which gives rise to the authority to search,[6] it is of no moment that Jenks did not indicate any subjective fear of the respondent or that he did not himself suspect that respondent was armed.[7] Having in the course of a law-

[6] The majority opinion of the Court of Appeals also discussed its understanding of the law where the police officer makes what the court characterized as "a routine traffic stop," *i. e.*, where the officer would simply issue a notice of violation and allow the offender to proceed. Since in this case the officer did make a full custody arrest of the violator, we do not reach the question discussed by the Court of Appeals.

[7] The United States concedes that "in searching respondent, [Officer Jenks] was not motivated by a feeling of imminent danger and was not specifically looking for weapons." Brief for the United States,

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

CHAMBERS OF
THE CHIEF JUSTICE

November 29, 1973

Re: No. 72-936 - U. S. v. Robinson

Dear Bill:

Please join me.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 5, 1973

Dear Thurgood:

Please join me in your dissent in 72-936, U.S. v. Robinson.

William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 6, 1973

RE: No. 72-936 United States v. Robinson

Dear Thurgood:

Please join me in your dissenting opinion in the above.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 1, 1973

72-936 - U. S. v. Robinson

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 2, 1972

Re: No. 72-936 - United States v. Robinson

Dear Bill:

I agree with your opinion in this case.

Sincerely,

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 1, 1973

Re: No. 72-936 -- United States v. Robinson

Dear Bill:

In due course I shall try my hand at a dissent in this case.

Sincerely,

T. M.

Mr. Justice Rehnquist

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–936

United States, Petitioner, *v.* Willie Robinson, Jr. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[December —, 1973]

MR. JUSTICE MARSHALL, dissenting.

Certain fundamental principles have characterized this Court's Fourth Amendment jurisprudence over the years. Perhaps the most basic of these was expressed by Mr. Justice Butler, speaking for a unanimous Court in *Go-Bart Co.* v. *United States*, 282 U. S. 344 (1931): "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." 282 U. S., at 357. As we recently held, "The constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case," *Sibron* v. *New York*, 392 U. S. 40, 59 (1968). And the intensive, at times painstaking, case by case analysis characteristic of our Fourth Amendment decisions bespeaks our "jealous regard for maintaining the integrity of individual rights." *Mapp* v. *Ohio*, 367 U. S. 643, 647 (1961). See also *Weeks* v. *United States*, 232 U. S. 383, 393 (1914).

In the present case, however, the majority turns its back on these principles, holding that "the fact of the lawful arrest" always establishes the authority to conduct a full search of the arrestee's person, regardless of whether in a particular case "there was present one of the reasons supporting the authority for a search of the person inci-

12/5/73

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-936

United States, Petitioner, v. Willie Robinson, Jr.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

[December —, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS concurs, dissenting

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmu
Mr. Justice Powell
Mr. Justice Rehnqui

From: Marshall, J.

Circulated: _____

Recirculated: DEC 6

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-936

United States, Petitioner, v. Willie Robinson, Jr. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

[December —, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS concurs, dissenting.

Certain fundamental principles have characterized this Court's Fourth Amendment jurisprudence over the years. Perhaps the most basic of these was expressed by Mr. Justice Butler, speaking for a unanimous Court in *Go-Bart Co. v. United States*, 282 U. S. 344 (1931): "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." 282 U. S., at 357. As we recently held, "The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U. S. 40, 59 (1968). And the intensive, at times painstaking, case by case analysis characteristic of our Fourth Amendment decisions bespeaks our "jealous regard for maintaining the integrity of individual rights." *Mapp v. Ohio*, 367 U. S. 643, 647 (1961). See also *Weeks v. United States*, 232 U. S. 383, 393 (1914).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 5, 1973

Re: No. 72-936 - U.S. v. Robinson

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

MEMORANDUM

TO: Mr. Justice Rehnquist DATE: November 7, 1973

FROM: Lewis F. Powell, Jr.

No. 72-936 United States v. Robinson

I intend to join your opinion, but I wish to make three suggestions for your consideration.

1. I believe that the opinion would be strengthened by an explicit statement of a proposition that I find implicit throughout your argument, namely, that a person lawfully subjected to custodial arrest retains no significant Fourth Amendment interest in the privacy of his person. In the paragraph beginning on page 16, you reject the idea "that there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority for a search of the person incident to arrest." The concluding sentence of his discussion states what I believe to be the core of the opinion:

> "It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment."

I fully agree with this statement, It impliedly recognizes the proper role of the Fourth Amendment - to prevent unwarranted governmental intrusions into areas of an individual's life about which he entertains legitimate

expectations of privacy. Whatever the ancillary consequences of this constitutional guarantee, its purpose is not to allow those who have committed crimes to go undetected, but rather to shield innocent citizens from unjustifiable invasions of privacy in the name of law enforcement. I view the custodial arrest as the significant intrusion of state power into the realm of individual affairs normally termed private. Assuming that the arrest is lawful, the privacy interest guarded by the Fourth Amendment is subordinated to a legitimate and overriding governmental interest. At that point the arrestee retains no significant interest in the privacy of his person. No reason exists to hamper law enforcement by requiring some independent justification for a search incident to a lawful arrest. This seems to me the reason that the fact of lawful arrest even justifies a full search of the person, if that search is not narrowly limited to seizing evidence or disarming the arrestee. In other words, the search incident to lawful arrest is necessarily reasonable under the Fourth Amendment because the privacy interest protected by that constitutional guarantee is substantially and legitimately abated by the fact of arrest. If you agree that this is the essential premise underlying your opinion, perhaps you can emphasize it along the foregoing lines. I think the opinion would be strengthened if this were expressly stated.

2. The quotation from Hulker v. Hennessey on page 13 unnecessarily detracts from the strength of your argument. I read the quotation as

identifying three rationales for a search incident to arrest, none of which is present in this case. To the extent that some may assume that the three stated reasons are exclusive, the quotation may undercut somewhat the force of your reasoning elsewhere in the opinion.

3. Finally, I point out what to me at least is a potential ambiguity. The first sentence of the last paragraph on page 14 and the first sentence of the next paragraph might leave the impression that the Court of Appeals plurality failed to recognize the police officer's legitimate need to disarm an arrestee. I believe your description of Judge Wright's reasoning is entirely accurate, but some potential for confusion exists. Perhaps the difficulty could be avoided by italicizing the word "full" near the bottom of page 14.

* * * *

I hope these suggestions will not add to your burdens. You have a court in sight, but I do not think the foregoing would reduce your constituency.

L. F. P., Jr.

ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 13, 1973

No. 72-936 United States v. Robinson
No. 71-1669 Gustafson v. Florida

Dear Bill:

Please join me in your opinions in the above cases.

As we discussed, I will circulate a brief concurrence which will not in any way be incompatible with what you have written.

Sincerely,

L. Clarence

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

From: Powell, J.

Circulated: NOV 13 1973

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 72-936 AND 71-1669

United States, Petitioner,
72-936 *v.*
Willie Robinson, Jr.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

James E. Gustafson,
Petitioner,
71-1669 *v.*
State of Florida.

On Writ of Certiorari to the Supreme Court of Florida.

[November —, 1973]

MR. JUSTICE POWELL, concurring.

Although I join the opinions of the Court, I write briefly to emphasize what seems to me to be the essential premise of our decisions.

The Fourth Amendment safeguards the right of "the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." These are areas of an individual's life about which he entertains legitimate expectations of privacy. I believe that an individual lawfully subjected to a custodial arrest retains no significant Fourth Amendment interest in the privacy of his person. Under this view the custodial arrest is the significant intrusion of state power into the privacy of one's person. If the arrest is lawful, the privacy interest guarded by the Fourth Amendment is subordinated to a legitimate and overriding governmental concern. No reason then exists to frustrate law enforcement by requiring some independent justification for a search incident to a lawful custodial arrest. This seems to me the reason that a valid arrest justifies a full search of the person, even if that search is not narrowly

1st DRAFT

Circulated: 11-1-73

SUPREME COURT OF THE UNITED STATES

No. 72-936

United States, Petitioner, v. Willie Robinson, Jr.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Robinson was convicted in United States District Court for the District of Columbia of the possession and facilitation of concealment of heroin in violation of 26 U. S. C. § 4704 (a) (1964 ed.), and 21 U. S. C. § 174 (1964 ed.). He was sentenced to concurrent terms of imprisonment for these offenses. On his appeal to the Court of Appeals for the District of Columbia Circuit, that court first remanded the case to the District Court for evidentiary hearing concerning the scope of the search of respondent's person which had occurred at the time of his arrest. *United States* v. *Robinson*, — U. S. App. D. C. —, 447 F. 2d 1215 (1971). The District Court made findings of fact and conclusions of law adverse to respondent, and he again appealed. This time the Court of Appeals reversed the judgment of conviction, holding that the heroin introduced in evidence against respondent had been obtained as a result of a search which violated the Fourth Amendment to the United States Constitution. *United States* v. *Robinson*, — U. S. App. D. C. —, 471 F. 2d 1082 (1972). We granted certiorari, — U. S. — (1973), and set the case for argument to-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 8, 1973

Re: No. 72-936 - United States v. Robinson

Dear Lewis:

Thank you for your suggestions about the draft opinion. I think that some language such as you suggest in the first paragraph of your note would strengthen the opinion, and I propose to include some along the lines described later in this note; the quotation from Hennessey may not be ideal, but I think it does serve the purpose of shedding some light about how courts viewed this proposition during the last century; there just aren't too many cases to choose from. I think your suggestion in the third paragraph is a very happy one, and I incorporate it as made.

1. I agree with the observations contained in your first paragraph, but would prefer to have the language actually added to the opinion take a somewhat narrower tack. I am frankly skeptical of generalized summaries of the meaning of constitutional provisions which, while considered in the context of the case make perfectly good sense and are undoubtedly correct, can be taken out of context in some later litigation and urged to stand for a quite different proposition than they were intended to speak. If a more modest reprise of your paragraph 1 is acceptable, I would propose the following language to be inserted immediately before the last sentence in Part III of the opinion:

> "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion having taken place, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest . . . etc."

I am probably obligated to circulate this sentence to those who have already joined the opinion, and will be happy to do so if it sufficiently advances your purpose.

My reaction to your paragraphs (2) and (3) are pretty well spelled out in the earlier part of this note.

Sincerely,

Bill

P.S. I have offered a clerkship to Bill Jacobs, whom you recommended and by whom I was very much impressed in the personal interview. WHR

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-936

United States, Petitioner, v. Willie Robinson, Jr.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November —, 1973]

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November 15, 1973

Re: No. 72-936 - U.S. v. Robinson

Dear Chief:

Thanks for your suggestions respecting the above opinion. You are of course right about identifying the fact that the Court of Appeals' opinion was en banc and I thought it was worth putting on page 1, rather than on page 5 as you suggested. I will make that change.

On page 9, I agree that the idea deserves reiteration as you suggest; just from a point of view of style, I would prefer to place it after the quote from Terry on page 10, where it would read:

> "Terry, therefore, affords no basis to carry over to its probable cause arrest the limitations this Court placed on a stop-and-frisk search permissible without probable cause."

I am loath to put the bracketed words "the stop-and-frisk" in the midst of the Terry quotation, since what we are trying to demonstrate is that the Terry language supports us, and I think that the insertion of bracketed phrases might detract from the impression we are trying to convey.

With respect to this suggested addition on page 17, while I fully agree with the contents, as a tactical matter I would

Personal

rather leave it out of this opinion. I have just added the sentence beginning "A custodial arrest" at Lewis' request, and I have the uneasy feeling that if I add another sentence to the paragraph Potter may become unhappy. I would rather have a six-man opinion as written than run the risk of just a concurrence in the judgment on his part. In addition, I think that the language you suggest might unintentionally narrow the breadth of the opinion, by suggesting a basis for analysis in terms of the probability of finding weapons or evidence, even though the proposed sentence clearly states that none need be actually found. What I have tried to say is that it makes no difference whether there is any probability of discovering weapons or evidence, and it makes no difference whether any are found; I honestly feel that any reference which would in any way undercut this approach is undesirable.

Sincerely,

WHR

The Chief Justice

pp. 1, 2, 16, 17

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–936

United States, Petitioner, v. Willie Robinson, Jr.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[November —, 1973]

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