

The Burger Court Opinion Writing Database

United States v. Edwards
415 U.S. 800 (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

March 5, 1974

Re: No. 73-88 - United States v. Edwards

Dear Byron:

Please join me.

Regards,

WB3

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 11, 1974

Dear Potter:

Please join me in your dissent in
73-83, United States v. Edwards.

W.O.
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.

March 13, 1974

RE: No. 73-88 United States v. Edwards

Dear Potter:

Please join me in your dissenting
opinion in the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 21, 1974

73-88 - United States v. Edwards

MEMORANDUM TO THE CONFERENCE

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

P.S.
P.S.

Place your seal

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-88

From: Stewart, J.

Circulated: MAR 11 1974

United States, Petitioner,
 v.
 Eugene H. Edwards and William T. Livesay.

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

[March —, 1974]

MR. JUSTICE STEWART, dissenting.

The Court says that the question before us "is whether the Fourth Amendment should be extended" to prohibit the warrantless seizure of Edwards' clothing. I think, on the contrary, that the real question in this case is whether the Fourth Amendment is to be ignored. For in my view the judgment of the Court of Appeals can be reversed only by disregarding established Fourth Amendment principles firmly embodied in many previous decisions of this Court.

As the Court has repeatedly emphasized in the past, "the most basic constitutional rule in this area 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.'" *Coolidge v. New Hampshire*, 403 U. S. 443, 454-455; *Katz v. United States*, 389 U. S. 347, 357. Since it is conceded here that the seizure of Edwards' clothing was not made pursuant to a warrant, the question becomes whether the Government has met its burden of showing that the circumstances of this seizure brought

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

2nd DRAFT

20 1.2
SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 73-88

Circulated:

Recirculated: MAR 6 1974

United States, Petitioner,
v.
Eugene H. Edwards and
William T. Livesay.

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

[March —, 1974]

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

The Court says that the question before us "is whether the Fourth Amendment should be extended" to prohibit the warrantless seizure of Edwards' clothing. I think, on the contrary, that the real question in this case is whether the Fourth Amendment is to be ignored. For in my view the judgment of the Court of Appeals can be reversed only by disregarding established Fourth Amendment principles firmly embodied in many previous decisions of this Court.

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

From: White, J.

Circulated: 2-20-7

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-88

United States,
Petitioner,
v.
Eugene H. Edwards and
William T. Livesay. } On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit.

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question here is whether the Fourth Amendment should be extended to exclude from evidence certain clothing taken from respondent Edwards while he was in custody at the city jail approximately 10 hours after his arrest.

Shortly after 11 p. m. on May 31, 1970, respondent Edwards was lawfully arrested on the streets of Lebanon, Ohio, and charged with attempting to break into that city's Post Office.¹ He was taken to the local jail and placed in a cell. Contemporaneously or shortly thereafter, investigation at the scene revealed that the attempted entry had been made through a wooden window which apparently had been pried up with a pry bar, leaving paint chips on the window sill and wire mesh screen. The next morning, trousers and a T-shirt were purchased for Edwards to substitute for the clothing

¹ Respondent's alleged confederate, Edward Livesay, was copetitioner in this case, but died after the petition for certiorari was granted. We therefore vacate the judgment as to him and remand the case to the District Court with directions to dismiss the indictment. *Durham v. United States*, 401 U. S. 481 (1971).

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

pp 2, 3, 8

From: White, J.

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: 2-21-

No. 73-88

United States,
Petitioner,
v.
Eugene H. Edwards and
William T. Livesay. } On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit.

[February —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

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

From: Marshall, J.

Circulated: MAR 15 197

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-88

United States, Petitioner,
v.
Eugene H. Edwards and William T. Livesay. } On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit.

[March —, 1974]

MR. JUSTICE MARSHALL, concurring in the result.

It is well settled that the search incident to arrest exception to the warrant requirement authorizes the police, without a search warrant, "contemporaneously" with the arrest, "to search persons lawfully arrested . . . in order to find and seize things connected with the crime . . ." *Agnello v. United States*, 269 U. S. 20, 30 (1925). See also *Chimel v. California*, 395 U. S. 752 (1969). "When a man is legally arrested for an offense, whatever is found upon his person . . . which may be used to prove the offense may be seized and held as evidence in the prosecution." *Carroll v. United States*, 267 U. S. 132, 158 (1925). As I view the present case, the police did nothing more than exercise this authority.

At the time of his arrest, the police had the authority to seize the clothing respondent was wearing in order to determine whether it contained evidence of the attempted break-in with which he was charged.* By taking

*The seizure in this case thus stands on a different footing from the seizure of the cigarette package in *United States v. Robinson*, — U. S. — (1973). In *Robinson* it was conceded that the seizure could not be justified by any need to discover or preserve evidence of the crime for which the defendant had been arrested, driving with a revoked operator's permit. See — U. S., at — (MARSHALL, J., dissenting).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 21, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-88 -- United States v. Edwards

On March 15th I circulated a proposed opinion
"concurring in the result" in this case.

Since then I have been holding a "reargument"
with myself and find that this proposed opinion and
my dissent in United States v. Robinson just cannot
stay in bed together.

Therefore, I now withdraw my proposed concurrence
and join Potter's dissent.

T. M.
T. M.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

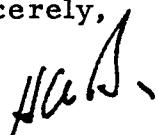
February 21, 1974

Re: No. 73-88 - U. S. v. Edwards

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 21, 1974

No. 73-88 United States v. Edwards

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

CC: The Conference

LFP/gg

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 27, 1974

Re: 73-88 - United States v. Edwards

Dear Byron:

Please join me in your opinion for the Court in this case.

Sincerely,

WR

Mr. Justice White

Copies to the Conference