The Burger Court Opinion Writing Database

Brown v. Illinois

422 U.S. 590 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1975

Re: 73-6650 - Brown v. Illinois

Dear Harry:

I join.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 11, 1975

Re: Brown v. Illinois, No. 73-6650

Dear Harry:

Please join me.

Sincerely,

WILLIAM O. DOUGLAS

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 9, 1975

RE: No. 73-6650 Brown v. Illinois

Dear Harry:

I agree.

Sincerely,

Bill

Mr. Justice Blackmun

cc; The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 9, 1975

Re: No. 73-6650, Brown v. Illinois

Dear Harry,

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

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 10, 1975

Re: No. 73-6650 - Brown v. Illinois

Dear Harry:

I shall concur in the judgment in this case substantially as follows:

> "Insofar as the Court holds (1) that despite Miranda warnings the Fourth and Fourteenth Amendments require the exclusion from evidence of statements obtained as the fruit of an arrest which the arresting officers knew or should have known was without probable cause and unconstitutional and (2) that the statements obtained in this case were in this category. I am in agreement and therefore concur in the judgment."

Sincerely,

Mr. Justice Blackmun

Copies to Conference

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: _____

Recirculated: 6-11-75

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6650

Richard Brown, Petitioner, *v.* State of Illinois.	On Writ of Certiorari to the Supreme Court of Illinois.

[June —, 1975]

MR. JUSITCE WHITE, concurring in the judgment.

Insofar as the Court holds (1) that despite *Miranda* warnings the Fourth and Fourteenth Amendments require the exclusion from evidence of statements obtained as the fruit of an arrest which the arresting officers knew or should have known was without probable cause and unconstitutional, and (2) that the statements obtained in this case were in this category, I am in agreement and therefore concur in the judgment.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 10, 1975

Re: No. 73-6650 -- Richard Brown v. State of Illinois

Dear Harry:

Please join me.

Sincerely,

T. M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice
Mr. Justice Doug
Mr. Justice Brenn
Mr. Justice Stewa
Mr. Justice White
Mr. Justice Marsh
Mr. Justice Powell
Mr. Justice Rehnqu

From: Blackmun, J.

1st DRAFT

Circulated: 6/6/75

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SUPREME COURT OF THE UNITED STATES

No. 73-6650

Richard Brown, Petitioner, v. State of Illinois. | On Writ of Certiorari to the Supreme Court of Illinois.

[June —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case lies at the crossroads of the Fourth and the Fifth Amendments. Petitioner was arrested without probable cause and without a warrant. He was given, in full, the warnings prescribed by *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Thereafter, while in custody, he made two inculpatory statements. The issue is whether evidence of those statements was properly admitted, or should have been excluded, in petitioner's subsequent trial for murder in state court. Expressed another way, the issue is whether the statements were to be excluded as the fruit of the illegal arrest, or were admissible because the giving of the *Miranda* warnings sufficiently attenuated the taint of the arrest. See *Wong Sun* v. *United States*, 371 U. S. 471 (1963). The Fourth Amendment, of course, has been held to be applicable to the States through the Fourteenth Amendment. *Mapp* v. *Ohio*, 367 U. S. 643 (1961).

I

As petitioner Richard Brown was climbing the last of the stairs leading to the rear entrance of his Chicago apartment in the early evening of May 13, 1968, he happened to glance at the window near the door. He saw, pointed at him through the window, a revolver held by a stranger who was inside the apartment. The man

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

From: Blackmun, J.

Circulated:

Recirculated: 6/18/75

p. 15

STYLISTIC CHANGES

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6650

Richard Brown, Petitioner, *v.* State of Illinois. | On Writ of Certiorari to the Supreme Court of Illinois.

[June —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case lies at the crossroads of the Fourth and the Fifth Amendments. Petitioner was arrested without probable cause and without a warrant. He was given, in full, the warnings prescribed by *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Thereafter, while in custody, he made two inculpatory statements. The issue is whether evidence of those statements was properly admitted, or should have been excluded, in petitioner's subsequent trial for murder in state court. Expressed another way, the issue is whether the statements were to be excluded as the fruit of the illegal arrest, or were admissible because the giving of the *Miranda* warnings sufficiently attenuated the taint of the arrest. See *Wong Sun* v. *United States*, 371 U. S. 471 (1963). The Fourth Amendment, of course, has been held to be applicable to the States through the Fourteenth Amendment. *Mapp* v. *Ohio*, 367 U. S. 643 (1961).

I

As petitioner Richard Brown was climbing the last of the stairs leading to the rear entrance of his Chicago apartment in the early evening of May 13, 1968, he happened to glance at the window near the door. He saw, pointed at him through the window, a revolver held by a stranger who was inside the apartment. The man

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

file 7

MEMORANDUM TO THE CONFERENCE:

Re: Holds for Brown v. Illinois, No. 73-6650

1. No. 74-5551, Ryon v. Maryland

Petitioner Ryon was convicted in a Maryland state court of murdering her husband. At her jury trial her confession was admitted in evidence. The confession was obtained by county police who took petitioner into custody in order to question her about her husband's death. They did not formally arrest her, though they had obtained an arrest warrant; nor did they take her before a magistrate, though one was available at the station. They told her that the purpose of taking her into custody was to view a line-up. Petitioner has an estimated I.Q. of 65. Following Miranda warnings, she was questioned for some seven hours. A confession was obtained and she was then arraigned. Prior to trial, a suppression hearing was held at which the court determined that the confession was voluntary.

On appeal, the Maryland Court of Special Appeals affirmed. It held that Wong Sun v. United States, 371 U.S. 471 (1963), does not control Maryland prosecutions, and therefore the lawfulness of the arrest was "a complete irrelevancy." Under Maryland law, it held, "a confession which is otherwise shown to have been voluntary is not rendered inadmissible by the fact that the accused was in custody under an illegal arrest at the time of making the confession." The court did not determine whether, in fact, petitioner was legally in custody at the time of her confession. The Maryland Court of Appeals declined review.

The Maryland court appears to have erred in two respects: first, in holding that the exclusionary rule articulated in Wong Sun was inapplicable through the Fourteenth Amendment to state prosecutions, and second, in holding that the illegality of the arrest was irrelevant to the issue of admissibility if the confession was otherwise voluntary. In both respects, Brown v. Illinois is applicable: it requires the state court to determine whether petitioner was legally in custody at the time of her confession, and whether the initial illegality of her arrest, if any, was later exploited. I shall vote to grant, vacate and remand for reconsideration in the light of Brown.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 9, 1975

No. 73-6650 Brown v. Illinois

Dear Harry:

I may write a brief concurring opinion in this case.

Although I am with you on "reversal", I had thought a remand for clarification of some of the factual issues would be desirable. I want to give this further consideration.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

6/17/75

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

From: Powell, J.

Circulated: JUN 18 1975

Recirculated: _____

No. 73-6650 BROWN v. ILLINOIS

MR. JUSTICE POWELL, concurring in part.

I join the Court insofar as it holds that the per se rule adopted by the Illinois Supreme Court for determining the admissibility of petitioner's two statements inadequately accommodates the diverse interests underlying the Fourth Amendment exclusionary rule. I would, however, remand the case for reconsideration under the general standards articulated in the Court's opinion and elaborated herein.

A.

The issue presented in this case turns on proper application of the policies underlying the Fourth Amendment exclusionary rule, not on the Fifth Amendment or the prophylaxis added to that guarantee by Miranda v.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 19, 1975

MEMORANDUM TO THE CONFERENCE:

I enclose a substitution for my concurring opinion in No. 73-6650 Brown v. Illinois.

L.F.P.

L.F.P., Jr.

ss

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-6650

Richard Brown, Petitioner, *v.* State of Illinois. | On Writ of Certiorari of the Supreme Court of Illinois.

[June 26, 1975]

MR. JUSTICE POWELL, with whom MR. JUSTICE REHNQUIST joins, concurring in part.

I join the Court insofar as it holds that the *per se* rule adopted by the Illinois Supreme Court for determining the admissibility of petitioner's two statements inadequately accommodates the diverse interests underlying the Fourth Amendment exclusionary rule. I would, however, remand the case for reconsideration under the general standards articulated in the Court's opinion and elaborated herein.

A

The issue presented in this case turns on proper application of the policies underlying the Fourth Amendment exclusionary rule, not on the Fifth Amendment or the prophylaxis added to that guarantee by *Miranda* v. *Arizona*, 384 U. S. 436 (1966).[1] The Court recognized in *Wong Sun* v. *United States*, 371 U. S. 471 (1963), that the Fourth Amendment exclusionary rule applies to statements obtained following an illegal arrest just as it does to tangible evidence seized in a similar manner or obtained pursuant to an otherwise illegal search and seizure. *Wong Sun* squarely rejected, however, the suggestion that the admissibility of statements so obtained

[1] Each of these guarantees provides an independent ground for suppression of statements and thus may make it unnecessary in many cases to conduct the inquiry mandated by *Wong Sun* v. *United States*, 371 U. S. 471 (1963).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1975

Re: No. 73-6650 - Brown v. Illinois

Dear Harry:

I voted to affirm at Conference. I don't plan to write anything separate, but I will hold back for now and take a look at whatever Lewis writes.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1975

Re: No. 73-6650 - Brown v. Illinois

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,

Mr. Justice Powell

Copies to the Conference