

The Burger Court Opinion Writing Database

United States v. Watson

423 U.S. 411 (1976)

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

November 21, 1975

Re: 74-538 - United States v. Watson

Dear Byron:

I join your November 17 proposed opinion.

Regards,

WB3

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 13, 1975

RE: No. 74-538 United States v. Watson

Dear Byron:

I read your opinion as written more broadly than I understood there was a Court in agreement at conference. In the circumstances I'll in due course prepare a dissent.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 19, 1976

RE: No. 74-538 United States v. Watson

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 13, 1975

Re: No. 74-538, U.S. v. Watson

Dear Byron,

I have sent to the printer a very brief separate concurrence in this case.

Sincerely yours,

P.S.
P

Mr. Justice White

Copies to the Conference

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

From: Stewart, J.

Circulated: NOV 14

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States,
Petitioner, } On Writ of Certiorari to the United
Henry Ogle Watson, } States Court of Appeals for the
Ninth Circuit.

[November —, 1975]

MR. JUSTICE STEWART, concurring.

The arrest in this case was made upon probable cause in a public place in broad daylight. The Court holds that this arrest did not violate the Fourth Amendment, and I agree. The Court does *not* decide, nor could it decide in this case, whether or under what circumstances an officer must obtain a warrant before he may lawfully enter a private place to effect an arrest. See *Gerstein v. Pugh*, 420 U. S. 103, 113 n. 13, *Coolidge v. New Hampshire*, 403 U. S. 443, 474-481; *Davis v. Mississippi*, 394 U. S. 721, 728; *Jones v. United States*, 357 U. S. 493, 499-500.

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

From: Stewart, J.

Circulated: _____

2nd DRAFT

Recirculated: DEC 5

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States,
Petitioner,
v.
Henry Ogle Watson. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[November —, 1975]

MR. JUSTICE STEWART, concurring in the result.

The arrest in this case was made upon probable cause in a public place in broad daylight. The Court holds that this arrest did not violate the Fourth Amendment, and I agree. The Court does *not* decide, nor could it decide in this case, whether or under what circumstances an officer must obtain a warrant before he may lawfully enter a private place to effect an arrest. See *Gerstein v. Pugh*, 420 U. S. 103, 113 n. 13; *Coolidge v. New Hampshire*, 403 U. S. 443, 474-481; *Davis v. Mississippi*, 394 U. S. 721, 728; *Jones v. United States*, 357 U. S. 493, 499-500.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
~~Mr.~~ Justice Marshall
Mr. Justice Blackma
Mr. Justice Powell
Mr. Justice Rehnqui

From: White, J.

Circulated: 11-12-

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States, Petitioner
v.
Henry Ogle Watson, } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions under the Fourth Amendment as to the legality of a warrantless arrest and of an ensuing search of the arrestee's automobile carried out with his purported consent.

I

The relevant events began on August 17, 1972, when an informant, one Khoury, telephoned a postal inspector informing him that respondent Watson was in possession of a stolen credit card and had asked Khoury to cooperate in using the card to their mutual advantage. On five to 10 previous occasions Khoury had provided the inspector with reliable information on postal inspection matters, some involving Watson. Later that day Khoury delivered the card to the inspector. On learning that Watson had agreed to furnish additional cards, the inspector asked Khoury to arrange to meet with Watson. Khoury did so, a meeting being scheduled for August 22.¹ Watson cancelled that engagement, but at

¹ In the meantime the inspector had verified that the card was stolen.

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 5, 11

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: 11-17-7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States.	Petitioner v. Henry Ogle Watson,	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions under the Fourth Amendment as to the legality of a warrantless arrest and of an ensuing search of the arrestee's automobile carried out with his purported consent.

2

The relevant events began on August 17, 1972, when an informant, one Khoury, telephoned a postal inspector informing him that respondent Watson was in possession of a stolen credit card and had asked Khoury to cooperate in using the card to their mutual advantage. On five to 10 previous occasions Khoury had provided the inspector with reliable information on postal inspection matters, some involving Watson. Later that day Khoury delivered the card to the inspector. On learning that Watson had agreed to furnish additional cards, the inspector asked Khoury to arrange to meet with Watson. Khoury did so, a meeting being scheduled for August 22.¹ Watson cancelled that engagement, but at

¹ In the meantime the inspector had verified that the card was stolen.

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 8, 10

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: 11-26-7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States, Petitioner, v. Henry Ogle Watson, } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[December —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions under the Fourth Amendment as to the legality of a warrantless arrest and of an ensuing search of the arrestee's automobile carried out with his purported consent.

I

The relevant events began on August 17, 1972, when an informant, one Khoury, telephoned a postal inspector informing him that respondent Watson was in possession of a stolen credit card and had asked Khoury to cooperate in using the card to their mutual advantage. On five to 10 previous occasions Khoury had provided the inspector with reliable information on postal inspection matters, some involving Watson. Later that day Khoury delivered the card to the inspector. On learning that Watson had agreed to furnish additional cards, the inspector asked Khoury to arrange to meet with Watson. Khoury did so, a meeting being scheduled for August 22.¹ Watson cancelled that engagement, but at

¹ In the meantime the inspector had verified that the card was stolen.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6, 7, 12

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Frankfurter
Mr. Justice Stewart
~~Mr. Justice Harlan~~
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

Circulated: _____

Recirculated: 12-5-

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States,
Petitioner,
v.
Henry Ogle Watson. } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[December —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions under the Fourth Amendment as to the legality of a warrantless arrest and of an ensuing search of the arrestee's automobile carried out with his purported consent.

7

The relevant events began on August 17, 1972, when an informant, one Khoury, telephoned a postal inspector informing him that respondent Watson was in possession of a stolen credit card and had asked Khoury to cooperate in using the card to their mutual advantage. On five to 10 previous occasions Khoury had provided the inspector with reliable information on postal inspection matters, some involving Watson. Later that day Khoury delivered the card to the inspector. On learning that Watson had agreed to furnish additional cards, the inspector asked Khoury to arrange to meet with Watson. Khoury did so, a meeting being scheduled for August 22.¹ Watson cancelled that engagement, but at

¹ In the meantime the inspector had verified that the card was stolen.

165-10
J

To: The Chief Justice
Mr. Justice Burger
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States, Petitioner, v. Henry Ogle Watson. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case presents questions under the Fourth Amendment as to the legality of a warrantless arrest and of an ensuing search of the arrestee's automobile carried out with his purported consent.

The relevant events began on August 17, 1972, when an informant, one Khoury, telephoned a postal inspector informing him that respondent Watson was in possession of a stolen credit card and had asked Khoury to cooperate in using the card to their mutual advantage. On five to 10 previous occasions Khoury had provided the inspector with reliable information on postal inspection matters, some involving Watson. Later that day Khoury delivered the card to the inspector. On learning that Watson had agreed to furnish additional cards, the inspector asked Khoury to arrange to meet with Watson. Khoury did so, a meeting being scheduled for August 22. Watson cancelled that engagement, but at

the meantime the inspector had verified that the card was stolen.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1975

Re: No. 74-538 -- United States v. Henry Ogle Watson

Dear Byron:

I am working on what will become a "join in the result."

Sincerely,


T. M.

Mr. Justice White

cc: The Conference

JAN 16 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 74-538
—

United States, Petitioner, v. Henry Ogle Watson	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
--	--

[January —, 1976]

MR. JUSTICE MARSHALL, dissenting.

By granting police broad powers to make warrantless arrests, the Court today sharply reverses the course of our modern decisions construing the Warrant Clause of the Fourth Amendment. The Court turns next to the consent-to-search question last dealt with in *Schneckloth v. Bustamonte*, 412 U. S. 218 (1973). Without acknowledgment or analysis, the Court extends the scope of that decision to the situation expressly reserved in *Schneckloth*, and creates a rule that is inconsistent with *Schneckloth*'s own analysis. The Court takes both steps with a remarkable lack of consideration of either the facts of this case or the constitutional questions it is deciding. That is unfortunate not only because, in my view, the Court decides the constitutional questions wrongly, but also because consideration would have shown that the first question decided today is not raised by the facts before us, while the second should not be resolved here, given the present posture of this case. I respectfully dissent.

Before addressing what the Court does today, I note what it does not do. It does not decide this case on the narrow question that is presented. That is unfortunate for this is, fundamentally, a simple case.

On the afternoon of August 23, 1972, Awad Khoury,

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

From: Mr. Justice Marshall

Circulated:

Recirculated: JAN 20 1976

STYLISTIC CHANGES THROUGHOUT.
See Pages 4, 23, 24

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States, Petitioner,
v.
Henry Ogle Watson

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

[January —, 1976]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

By granting police broad powers to make warrantless arrests, the Court today sharply reverses the course of our modern decisions construing the Warrant Clause of the Fourth Amendment. The Court turns next to the consent-to-search question last dealt with in *Schneckloth v. Bustamonte*, 412 U. S. 218 (1973). Without acknowledgment or analysis, the Court extends the scope of that decision to the situation expressly reserved in *Schneckloth*, and creates a rule inconsistent with *Schneckloth*'s own analysis. The Court takes both steps with a remarkable lack of consideration of either the facts of this case or the constitutional questions it is deciding. That is unfortunate not only because, in my view, the Court decides the constitutional questions wrongly, but also because consideration would have shown that the first question decided today is not raised by the facts before us, and that the second question should not be resolved here, given the present posture of this case. I respectfully dissent.

Before addressing what the Court does today, I note what it does not do. It does not decide this case on the narrow question that is presented. That is unfortunate for this is, fundamentally, a simple case.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 17, 1975

Re: No. 74-538 - United States v. Watson

Dear Byron:

I am glad to join your opinion proposed for this case.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 25, 1975

No. 74-538 United States v. Watson

Dear Byron:

Although I will join your opinion, I am writing a concurrence to express some additional thoughts.

Sincerely,



Mr. Justice White

1fp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Harlan
Mr. Justice Black
Mr. Justice Rehnquist

From: Powell, J.

Circulated: DEC 1 1975

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States, Petitioner
v.
Henry Ogle Watson

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

[December —, 1975]

MR. JUSTICE POWELL, concurring.

Although I concur in the opinion of the Court, I write to express additional views. I note at the outset that the case could be disposed of on the ground that respondent's consent to the search was plainly voluntary. *Schneckloth v. Bustamonte*, 412 U. S. 218 (1973). Indeed, the evidence that his consent was the product of free will is so overwhelming that I would have held the consent voluntary even on the assumption that the preceding warrantless arrest was unconstitutional, and that the doctrine of *Wong Sun v. United States*, 371 U. S. 471 (1963), therefore was applicable. See *Brown v. Illinois*, 422 U. S. 590 (1975). The Court's different route to the same result requires, however, an inquiry into the validity of the arrest itself.

Respondent was arrested without a warrant in a public restaurant six days after postal inspectors learned from a reliable source that he possessed stolen credit cards in violation of 18 U. S. C. § 1798. The Government made no effort to show that circumstances precluded the obtaining of a warrant, relying instead for the validity of the arrest solely upon the showing of probable cause.

p. 8

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-538

United States,
Petitioner,
v.
Henry Ogle Watson, } On Writ of Certiorari to the United
States Court of Appeals for the
Ninth Circuit.

[January —, 1976]

MR. JUSTICE POWELL, concurring.

Although I concur in the opinion of the Court, I write to express additional views. I note at the outset that the case could be disposed of on the ground that respondent's consent to the search was plainly voluntary. *Schneckloth v. Bustamonte*, 412 U. S. 218 (1973). Indeed, the evidence that his consent was the product of free will is so overwhelming that I would have held the consent voluntary even on the assumption that the preceding warrantless arrest was unconstitutional, and that the doctrine of *Wong Sun v. United States*, 371 U. S. 471 (1963), therefore was applicable. See *Brown v. Illinois*, 422 U. S. 590 (1975). The Court's different route to the same result requires, however, an inquiry into the validity of the arrest itself.

Respondent was arrested without a warrant in a public restaurant six days after postal inspectors learned from a reliable source that he possessed stolen credit cards in violation of 18 U. S. C. § 1708. The Government made no effort to show that circumstances precluded the obtaining of a warrant, relying instead for the validity of the arrest solely upon the showing of probable cause

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 17, 1975

Re: No. 74-538 - United States v. Watson

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 23, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 74-538, United States v. Watson
and No. 75-19, United States v. Santana

There is one case held for the above, Rich and Weber
v. United States, No. 75-5296:

This case is actually a consolidation of two cases from CA 8, one involving Weber alone and one involving both petrs. Petrs were convicted of conspiracy to manufacture and distribute amphetamines in W.D. Mo. The cases arose when DEA agents obtained information that equipment and materials to be used in such manufacure were being collected at Weber's farm. The agents went to the farm with an arrest warrant, entered the house and arrested Weber. Rich was arrested because he was involved in supplying the materials.

After Weber was arrested in the above he conspired with one Goewart to manufacture more amphetamines at Weber's farm. Goewart tipped off the authorities and when Weber arrived at his farm with a necessary chemical Goewart signaled the agents who busted in and arrested Weber without a warrant, seizing equipment in plain view.

This case, involving a warrantless arrest in a house upon fast-breaking probable cause is not goverened by either Santana or Watson. Since the authorities already had a man inside it would seem that Weber's privacy had already been breached somewhat. The SG points out that CA 8 did not decide whether the entry into the house