

The Burger Court Opinion Writing Database

South Dakota v. Opperman

428 U.S. 364 (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

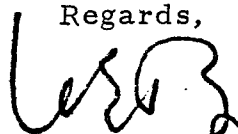
May 24, 1976

Re: 75-76 - South Dakota v. Opperman

MEMORANDUM TO THE CONFERENCE:

Beginning today I will circulate "ready"
drafts in typewritten form. Printed draft will follow
when the Print Shop pressure allows.

Regards,



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

WP

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Rehnquist
 Mr. Justice Brandenburg
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Burger

From: Mr. Justice Burger
 Circulated: MAY 25 1976

Recirculated: _____

No. 75-76

South Dakota v. Opperman

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We review the judgment of the Supreme Court of South Dakota, holding that local police violated the Fourth Amendment to the Federal Constitution when they conducted a routine inventory search of an automobile lawfully impounded by police for violation of municipal parking ordinances.

(1)

Local ordinances prohibit parking in certain areas of downtown Vermillion, South Dakota, between the hours of 2:00 a. m. and 6:00 a. m. During the early morning hours of December 10, 1973, a Vermillion police officer observed respondent's unoccupied vehicle illegally parked

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

CHAMBERS OF
THE CHIEF JUSTICE

May 26, 1976

Re: 75-76 - South Dakota v. Opperman

Dear Bill:

I am happy to oblige by inserting (necessary or not) after "Constitution" on line 3, page 1 (typewritten draft), the words "as applicable to the State of South Dakota under the 14th Amendment."

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

WP

✓
 To: Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Rehnquist
 Mr. Justice Stevens
 Mr. Justice Powell
 Mr. Justice Burger
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Marshall
 Mr. Justice Brandenburg

From: The Clerk of the Court

Circulated: _____

Recirculated: MAY 27 1976

printed
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-76

South Dakota, Petitioner, v. Donald Opperman.	}	On Writ of Certiorari to the Supreme Court of South Dakota.
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[June —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We review the judgment of the Supreme Court of South Dakota, holding that local police violated the Fourth Amendment to the Federal Constitution, as applicable to the States under the Fourteenth Amendment, when they conducted a routine inventory search of an automobile lawfully impounded by police for violation of municipal parking ordinances.

(1)

Local ordinances prohibit parking in certain areas of downtown Vermillion, S. D., between the hours of 2 a. m. and 6 a. m. During the early morning hours of December 10, 1973, a Vermillion police officer observed respondent's unoccupied vehicle illegally parked in the restricted zone. At approximately 3 a. m., the officer issued an overtime parking ticket and placed it on the car's windshield. The citation warned:

"Vehicles in violation of any parking ordinance may be towed from the area."

At approximately 10 a. m. on the same morning, another officer issued a second ticket for an expired parking violation. These circumstances were routinely reported to police headquarters, and after the vehicle was inspected, the car was towed to the city impound lot.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1976

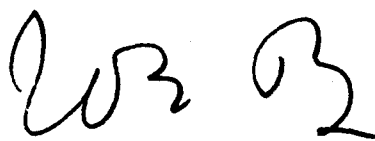
PERSONAL

Re: 75-76 - South Dakota v. Opperman

Dear Lewis:

Thank you for your note and concurrence.
With deference I cannot agree that any additional writing
is "necessary" but the combination of Article III and the
First Amendment guarantees your right-to-write! I have
tried to deal with your concerns by an addition to Note 5
(enclosed).

Regards,

A handwritten signature in dark ink, appearing to be "WB 02", written in a cursive, stylized script.

Mr. Justice Powell

June 15, 1976

Re: 75-76 - South Dakota v. Opperman

5/ (addition)

In view of the noncriminal context of inventory searches, and the inapplicability in such a setting of the requirement of probable cause, courts have held -- and quite correctly -- that search warrants are not required, linked as the warrant requirement textually is to the probable-cause concept. We have frequently observed that the warrant requirement assures that legal inferences and conclusions as to probable cause will be drawn by a neutral magistrate unrelated to the criminal investigative-enforcement process. With respect to noninvestigative police inventories of automobiles lawfully within governmental custody, however, the policies that support the warrant requirement, to which Mr. Justice Powell refers, are inapplicable.

WLB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1976

Re: 75-76 - South Dakota v. Opperman

MEMORANDUM TO THE CONFERENCE:

I have made a slight addition to note 5, page 6
so that it will read as follows:

5/

In view of the noncriminal context of inventory searches, and the inapplicability in such a setting of the requirement of probable cause, courts have held -- and quite correctly -- that search warrants are not required, linked as the warrant requirement textually is to the probable-cause concept. We have frequently observed that the warrant requirement assures that legal inferences and conclusions as to probable cause will be drawn by a neutral magistrate unrelated to the criminal investigative-enforcement process. With respect to noninvestigative police inventories of automobiles lawfully within governmental custody, however, the policies that support the warrant requirement, to which Mr. Justice Powell refers, are inapplicable.

addition →

Regards,

WB B

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1976

Re: 75-5873 - Prescimone v. United States
(Heretofore held for decision in 75-76 - So. Dakota v.
Opperman)

MEMORANDUM TO THE CONFERENCE:

In this case, petitioner was arrested for driving while intoxicated, after colliding with a police car. Pursuant to Baltimore City Police General Order 71-16, a city policeman entered petitioner's unlocked car, which had been damaged by the accident, and conducted an inventory of the contents. During the inventory, the officer discovered a loaded .22 caliber revolver under the rug in front of the driver's seat.

Petitioner, a convicted felon, was charged with possessing a firearm in violation of 18 U.S.C. App. §1202(a)(1). His motion to suppress the revolver was denied. Following a non-jury trial, petitioner was convicted and sentenced to one year's imprisonment. On appeal, CA 4 affirmed, expressly rejecting the argument that the inventory violated the Fourth Amendment. This disposition is entirely consistent with Opperman.

I will vote to deny.

Regards,

LCB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 28, 1976

Re: 75-76 - South Dakota v. Opperman

Dear Thurgood:

I will add the following as a footnote to my opinion:

The "consent" theory advanced by the dissent rests on the assumption that the search is exclusively for the protection of the car owner. It is not; the protection of the municipality and the officers from claims and the protection of the public from vandals who might find a firearm, Cody v. Dombrowski, supra, or as here, contraband drugs, are crucial.

Regards,

WRB

Mr. Justice Marshall

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Souter
Mr. Justice Ginsburg

From: Mr. Chief Justice

Circulated:

Recirculated: JUN 20 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-76

South Dakota, Petitioner, | On Writ of Certiorari to the
v. | Supreme Court of South
Donald Opperman. | Dakota.

[June —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We review the judgment of the Supreme Court of South Dakota, holding that local police violated the Fourth Amendment to the Federal Constitution, as applicable to the States under the Fourteenth Amendment, when they conducted a routine inventory search of an automobile lawfully impounded by police for violations of municipal parking ordinances.

(1)

Local ordinances prohibit parking in certain areas of downtown Vermillion, S. D., between the hours of 2 a. m. and 6 a. m. During the early morning hours of December 10, 1973, a Vermillion police officer observed respondent's unoccupied vehicle illegally parked in the restricted zone. At approximately 3 a. m., the officer issued an overtime parking ticket and placed it on the car's windshield. The citation warned:

"Vehicles in violation of any parking ordinance may be towed from the area."

At approximately 10 a. m. on the same morning, another officer issued a second ticket for an overtime parking violation. These circumstances were routinely reported to police headquarters, and after the vehicle was inspected, the car was towed to the city impound lot.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 28, 1976

RE: No. 75-76 South Dakota v. Opperman

Dear Thurgood:

Please join me in the dissenting opinion you
have prepared in the above.

Sincerely,

Bail

Mr. Justice Marshall

cc: The Conference

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

✓

CHAMBERS OF
JUSTICE POTTER STEWART

June 28, 1976

75-76, South Dakota v. Opperman

Dear Thurgood,

Please add my name to your
dissenting opinion in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

Re: No. 75-76 - South Dakota v. Opperman

Dear Chief:

I shall await the dissenting opinion in
this case.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 28, 1976

Re: No. 75-76 - South Dakota v. Opperman

Dear Thurgood:

At the foot of your dissenting opinion in this case, please add the following:

"Statement of Mr. Justice White.

"Although I do not subscribe to all of my Brother Marshall's dissenting opinion, particularly some aspects of his discussion concerning the necessity for obtaining the consent of the car owner, I agree with most of his analysis and conclusions and consequently dissent from the judgment of the Court."

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-76 -- South Dakota v. Donald Opperman

In due time I will circulate a dissent.

T.M.

T.M.

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: JUN 25 1976

Recirculated: _____

No. 75-76 - South Dakota v. Opperman

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that the Fourth Amendment permits a routine police inventory search of the closed glove compartment of a locked automobile impounded for ordinary traffic violations. Under the Court's holding, such a search may be made without attempting to secure the consent of the owner and without any particular reason to believe the impounded automobile contains contraband, evidence, or valuables or presents any danger to its custodians or the public.^{1/} Because I believe this holding to be contrary to sound elaboration of established Fourth Amendment principles, I dissent.

As Mr. Justice Powell recognizes, the requirement of a warrant aside, resolution of the question whether an inventory search of closed

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WR

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 29, 1976

Re: No. 75-76, South Dakota v. Opperman

Dear Chief:

In response to your additional footnote in this case, I plan to add the following paragraph at the end of my footnote 8.

The Court suggests a further "crucial" justification for the search in this case: "protection of the public from vandals who might find a firearm, Cady v. Dombrowski, [413 U.S. 433 (1973)], or as here, contraband drugs" (emphasis added). Ante, at ___ n. ___. This rationale, too, is absolutely without support in this record. There is simply no indication the police were looking for dangerous items. Indeed, even though the police found shotgun shells in the interior of the car, Record, at 77, they never opened the trunk to determine whether it might contain a shotgun. Compare Cady, supra. Aside from this, the suggestion is simply untenable as a matter of law. If this asserted rationale justifies search of all impounded automobiles, it must logically also justify the search of all automobiles, whether impounded or not, located in a similar area, for the argument is not based upon the custodial role of the police. See also Cooper v. California, 386 U.S., at 61, quoted in note 5, supra. But this Court has never permitted the search of any car or home on the mere undifferentiated assumption that it might be vandalized and the vandals might find dangerous weapons or substances. Certainly Cady, permitting a limited search of a wrecked automobile where, inter alia, the police had a reasonable belief that the car contained a specific firearm, 413 U.S., at 448, does not so hold.

Sincerely,

T.M.
T. M.

The Chief Justice

cc: The Conference

stylistic changes throughout
see pp 6, 7, 8, 10, 11

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: 7/2/76

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-76

South Dakota, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of South
Donald Opperman. } Dakota.

[June —, 1976]

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

The Court today holds that the Fourth Amendment permits a routine police inventory search of the closed glove compartment of a locked automobile impounded for ordinary traffic violations. Under the Court's holding, such a search may be made without attempting to secure the consent of the owner and without any particular reason to believe the impounded automobile contains contraband, evidence, or valuables or presents any danger to its custodians or the public.¹ Because I believe this holding to be contrary to sound elaboration of established Fourth Amendment principles, I dissent.

As MR. JUSTICE POWELL recognizes, the requirement of a warrant aside, resolution of the question whether an inventory search of closed compartments inside a locked automobile can ever be justified as a constitutionally "reasonable" search² depends upon a reconciliation

¹ The Court does not consider, however, whether the police might open and search the glove compartment if it is locked, or whether the police might search a locked trunk or other compartment.

² I agree with MR. JUSTICE POWELL's conclusion, *ante*, at 1 n. 1, that, as petitioner conceded, Tr. of Oral Arg., at 5, the examination of the closed glove compartment in this case is a "search." See also *Camara v. Municipal Court*, 387 U. S. 523, 530 (1967): "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." See also *Cooper v.*

WJ

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 21, 1976

Re: No. 75-76 - South Dakota v. Opperman

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

June 14, 1976

No. 75-76 South Dakota v. Opperman

Dear Chief:

I enclose a copy of a concurring opinion in the above case.

You will note that I am joining your opinion, thus assuring - I believe - that you have a Court.

It was necessary for me to write because, as you will recall, you and I differ as to the role and importance of the "warrant clause" in the Fourth Amendment. What I have written in the past might be construed as inconsistent with the rather general treatment of "reasonableness" in your opinion. Accordingly, I felt it necessary to restate my position and relate it to inventory searches.

Sincerely,

The Chief Justice

lfp/ss

LFP/ss 6/14/76

✓
To: The Chief Justice
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

Circulated: JUN 14 1976

Recirculated: _____

No. 75-76 SOUTH DAKOTA v. OPPERMAN

MR. JUSTICE POWELL, concurring.

While I join the opinion of the Court, I add this opinion to express additional views as to why the search conducted in this case is valid under the Fourth and Fourteenth Amendments. This inquiry involves two distinct questions: (i) whether routine inventory searches are impermissible, and (ii) if not, whether they must be conducted pursuant to a warrant.

I.

The central purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975);

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-76

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

From: Mr. Justice Powell

Circulated:

South Dakota, Petitioner, } On Writ of Certiorari to the Supreme Court of South
v. }
Donald Opperman. } Dakota.

JUN 24 1976

[June —, 1976]

MR. JUSTICE POWELL, concurring.

While I join the opinion of the Court, I add this opinion to express additional views as to why the search conducted in this case is valid under the Fourth and Fourteenth Amendments. This inquiry involves two distinct questions: (i) whether routine inventory searches are impermissible, and (ii) if not, whether they must be conducted pursuant to a warrant.

I

The central purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. See, *e. g.*, *United States v. Brignoni-Ponce*, 422 U. S. 873, 878 (1975); *Camara v. Municipal Court*, 387 U. S. 523, 528 (1967). None of our prior decisions is dispositive of the issue whether the Amendment permits routine inventory "searches"¹ of automobiles.² Resolution of this

¹ Routine inventories of automobiles intrude upon an area in which the private citizen has a "reasonable expectation of privacy." *Katz v. United States*, 389 U. S. 347, 360 (1969) (Harlan, J., concurring). Thus, despite their benign purpose, when conducted by government officials they constitute "searches" for purposes of the Fourth Amendment. See *Terry v. Ohio*, 392 U. S. 1, 18 n. 15 (1967); *United States v. Lawson*, 487 F. 2d 468 (CA8 1973); *Mozzetti v. Superior Court*, 4 Cal. 3d 699, 709-710, 484 P. 2d 84,

[Footnote 2 is on p. 2]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 26, 1976

Re: No. 75-76 - South Dakota v. Opperman

Dear Chief:

Please join me. As a matter of nomenclature, would it not be better to refer to the constitutional provisions in question as the "Fourth and Fourteenth Amendments" rather than simply the Fourth Amendment, since they are being applied to a state in this case?

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 22, 1976

Re: 75-76 - South Dakota v. Opperman

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference