

The Burger Court Opinion Writing Database

Michigan v. DeFillippo
443 U.S. 31 (1979)

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 29, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 77-1680 Michigan v. DeFillippo

Enclosed is Wang draft of this "sticky" case,
which is circulated with a print of Brown v. Texas
77-6673, since each tend to shed some light on the other.

Regards,



cc: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Mcirculated: MAY 29 1979

Recirculated: _____

First Draft

No. 77-1680, MICHIGAN v. DeFILLIPPO

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

The question presented by this case is whether an arrest made in good faith reliance on an ordinance, which at the time had not been declared unconstitutional, is valid regardless of a subsequent judicial determination of its unconstitutionality.

(1)

At approximately 10:00 P.M. on September 14, 1976, Detroit police officers on duty in a patrol car received a

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

From: The Chief Justice

Circulated: _____

2nd DRAFT

Recirculated: JUN 5 1979

STYLISTIC CHANGES AS MARKED:

SUPREME COURT OF THE UNITED STATES

No. 77-1680

State of Michigan, Petitioner, | On Writ of Certiorari to the
v. | Court of Appeals of Mich-
Gary DeFillippo. | igan.

[June —, 1979]

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

The question presented by this case is whether an arrest made in good-faith reliance on an ordinance, which at the time had not been declared unconstitutional, is valid regardless of a subsequent judicial determination of its unconstitutionality.

At approximately 10:00 p. m. on September 14, 1976, Detroit police officers on duty in a patrol car received a radio call to investigate two persons reportedly appearing to be intoxicated in an alley. When they arrived at the alley, they found respondent and a young woman. The woman was in the process of lowering her slacks. One of the officers asked what they were doing, and the woman replied that she was about to relieve herself. The officer then asked respondent for identification; respondent asserted that he was Sergeant Mash, of the Detroit Police Department; he also purported to give his badge number, but the officer was unable to hear it. When respondent again was asked for identification, he changed his answer and said either that he worked for or that he knew Sergeant Mash. Respondent did not appear to be intoxicated.

Section 39-1-52.3 of the Code of the City of Detroit pro-

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

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1979

Re: 77-1680 - Michigan v. DeFillippo

MEMORANDUM TO THE CONFERENCE:

I propose to add the following, at page 7, as a footnote:

3/ The purpose of the Exclusionary Rule is to deter unlawful police action. No conceivable purpose of deterrence would be served by suppressing evidence which, at the time it was found on the person of the respondent, was the product of a lawful arrest and a lawful search. To deter police from enforcing a presumptively valid statute was never remotely in the contemplation of even the most zealous advocate of the Exclusionary Rule.

Regards,

les B

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

From: The Chief Justice

Circulated: _____

Recirculated: JUN 20 1979

Footnote added, p. 7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1680

State of Michigan, Petitioner, | On Writ of Certiorari to the
v. | Court of Appeals of Michigan.
Gary DeFillippo. |

[June —, 1979]

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

The question presented by this case is whether an arrest made in good-faith reliance on an ordinance, which at the time had not been declared unconstitutional, is valid regardless of a subsequent judicial determination of its unconstitutionality.

I

At approximately 10:00 p. m. on September 14, 1976, Detroit police officers on duty in a patrol car received a radio call to investigate two persons reportedly appearing to be intoxicated in an alley. When they arrived at the alley, they found respondent and a young woman. The woman was in the process of lowering her slacks. One of the officers asked what they were doing, and the woman replied that she was about to relieve herself. The officer then asked respondent for identification; respondent asserted that he was Sergeant Mash, of the Detroit Police Department; he also purported to give his badge number, but the officer was unable to hear it. When respondent again was asked for identification, he changed his answer and said either that he worked for or that he knew Sergeant Mash. Respondent did not appear to be intoxicated.

Section 39-1-52.3 of the Code of the City of Detroit pro-

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 6, 1979

RE: No. 77-1680 Michigan v. DeFillippo

Dear Thurgood and John:

We three are in dissent in this and I'll be
happy to try my hand at it.

Sincerely,



Mr. Justice Marshall

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

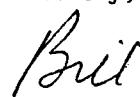
May 30, 1979

RE: No. 77-1680 Michigan v. DeFillippo

Dear Chief:

I shall as promptly as possible circulate a
dissent in the above.

Sincerely,



The Chief Justice

cc: The Conference

Mr. Justice Blackmun
Mr. Justice BRENNAN
Mr. Justice REHNQUIST
Mr. Justice STEVENS

*Please return
in good time*

From: Mr. Justice Brennan
SUPREME COURT OF THE UNITED STATES
Circulated: 15 JUN 1979

NO. 77-1680

Recirculated: _____

The State of Michigan
Petitioner
v.
Gary DeFillippo

) On Writ of Certiorari
) To the Court of Appeals
) Of the State of Michigan
)

[June __, 1979]

MR. JUSTICE BRENNAN dissenting.

I disagree with the Court's conclusion that Detroit police had constitutional authority to arrest and search respondent because respondent refused to identify himself in violation of the Detroit ordinance. In my view, the police conduct, whether or not authorized by state law, exceeded the bounds set by the Constitution and violated respondent's Fourth Amendment rights.

At the time of respondent's arrest Detroit City Code §39-1-52.3 read as follows:

Pages 1, 2, 4, 5

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

From: Mr. Justice F

Circulated: _____

Recirculated: 2

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1680

State of Michigan, Petitioner, | On Writ of Certiorari to the
v. | Court of Appeals of Michigan.
Gary DeFillippo. |

[June —, 1979]

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

I disagree with the Court's conclusion that Detroit police had constitutional authority to arrest and search respondent because respondent refused to identify himself in violation of the Detroit ordinance. In my view, the police conduct, whether or not authorized by state law, exceeded the bounds set by the Constitution and violated respondent's Fourth Amendment rights.

At the time of respondent's arrest Detroit City Code § 39-1-52.3 read as follows:

"When a police officer has reasonable cause to believe that the behavior of an individual warrants further investigation for criminal activity, the officer may stop and question such persons. It shall be unlawful for any person stopped pursuant to this section to refuse to identify himself, and to produce verifiable documents or other evidence of such identification. In the event that such person is unable to provide reasonable evidence of his true identity the police officer may transport him to the nearest precinct in order to ascertain his identity."

Detroit police, acting purely on suspicion, stopped respondent Gary DeFillippo on the authority of this ordinance and demanded that he identify himself and furnish proof of his identity. When respondent rebuffed their inquiries the police arrested him for violation of the ordinance. Thereafter police searched respondent and discovered drugs.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 5, 1979

Re: No. 77-1680, Michigan v. DeFillippo

Dear Chief,

I note that you will be writing the opinion for the Court in this case. Because I think there may have been some confusion in our Conference discussion, I write this note to you now in order to avoid later misunderstanding of my views.

A majority at the Conference voted to reverse the judgment in this case, but two quite different rationales for doing so were discussed. One was that there should be a "good faith" exception to the exclusionary rule. The other was that when a policeman makes an arrest upon probable cause to believe the arrestee has violated or is violating a validly enacted substantive criminal law, he has not violated the Fourth and Fourteenth Amendments, even though the law in question is later held to be constitutionally invalid. I would base reversal of the judgment entirely on the second of these rationales, and could not join an opinion that relied, even in part, upon the first of them. My understanding is that this is the view that ultimately prevailed, but, in any event, I wanted to clarify my own thoughts now.

Sincerely yours,

C. S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 30, 1979

Re: 77-1680 - Michigan v. DeFillippo

Dear Chief:

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1979

No. 79-1680, Michigan v. DeFillippo

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1979

Re: No. 77-1680 - Michigan v. DeFillippo

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Mr. Justice Brennan

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 18 JUN 1979

Recirculated: 18 JUN 1979

No. 77-1680 - Michigan v. DeFillippo

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion, but add a few words about the concern so evident in MR. JUSTICE BRENNAN's dissenting opinion that today's decision will allow States and municipalities to circumvent the probable cause requirement of the Fourth Amendment. There is some danger, I acknowledge, that the police will use a Stop and Identify ordinance to arrest persons for improper identification; that they will then conduct a search pursuant to the arrest; that if they discover contraband or other evidence of crime, the arrestee will be charged with some other offense; and that if they do not discover contraband

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 20 JUN 1973

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

77-

No. 1680

State of Michigan, Petitioner, } On Writ of Certiorari to the
v. { Court of Appeals of Michigan.
Gary DeFillippo.

[June —, 1979]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion, but add a few words about the concern so evident in MR. JUSTICE BRENNAN's dissenting opinion that today's decision will allow States and municipalities to circumvent the probable cause requirement of the Fourth Amendment. There is some danger, I acknowledge, that the police will use a Stop and Identify ordinance to arrest persons for improper identification; that they will then conduct a search pursuant to the arrest; that if they discover contraband or other evidence of crime, the arrestee will be charged with some other offense; and that if they do not discover contraband or other evidence of crime, the arrestee will be released. In this manner, if the arrest for violation of the Stop and Identify ordinance is not open to challenge, the ordinance itself could perpetually evade constitutional review.

There is no evidence in this case, however, that the Detroit ordinance is being used in such a pretextual manner. See Tr. of Oral Arg. 8. If a defendant in a proper case showed that the police habitually arrest, but do not prosecute, under a Stop and Identify ordinance, then I think this would suffice to rebut any claim that the police were acting in reasonable, good-faith reliance on the constitutionality of the ordinance. The arrestee could then challenge the validity of the ordinance, and, if the court concluded it was unconstitutional, could have the evidence obtained in the search incident to the arrest suppressed.

March 6, 1979

77-1680 Michigan v. DeFillippo

Dear Chief:

This refers to Potter's letter to you of March 5.

My understanding was that there were five votes to reverse the judgment on the ground Potter specified: that the Fourth and Fourteenth Amendments are not violated when an officer makes an arrest upon probable cause to believe the arrestee has violated or is violating a presumptively valid substantive criminal law.

A decision on this ground would make it unnecessary to address the broader ground (that has had a good deal of appeal for me) that the exclusionary rule should not be applied when it is perfectly clear that the officer has acted in good faith and strictly in accord with what he reasonably believed was required in the performance of his duty.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

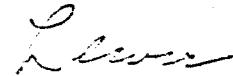
June 4, 1979

No. 77-1680 Michigan v. DeFillippo

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 30, 1979

Re: No. 77-1680 - Michigan v. DeFillippo

Dear Chief:

Please join me.

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 15, 1979

RE: No. 77-1680 - Michigan v. DeFillippo

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference