

The Burger Court Opinion Writing Database

Michigan v. Summers

452 U.S. 692 (1981)

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 3, 1981

79-1794, Michigan v. Summers

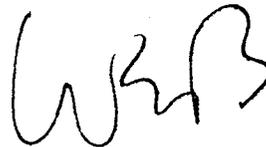
Dear John:

I join.

Regards,

Justice Stevens

Copies to the Conference

Handwritten signature of Warren E. Burger, appearing as 'WRB' in a cursive style.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 10, 1981

RE: No. 79-1794 Michigan v. Summers

Dear Potter:

Thurgood, you and I are in dissent in the above.
Would you be willing to undertake the dissent?

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Mr. Justice Stewart

cc:

Mr. Justice Marshall

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

✓
CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 19, 1981

RE: No. 79-1794 Michigan v. Summers

Dear John:

I'll await the dissent in the above.

Sincerely,

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 11, 1981

RE: No.79-1794 Michigan v. Summers

Dear Potter:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "BWS", is written in dark ink.

Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 10, 1981

Re: No. 79-1794, Michigan v. Summers

Dear Bill,

I shall be glad to undertake the dissenting
opinion in this case.

Sincerely yours,

P.S.
/

Justice Brennan

Copy to Justice Marshall

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 18, 1981

Re: 79-1794 - Michigan v. Summers

Dear John:

In due course I expect to circulate
a dissenting opinion.

Sincerely yours,

P.S.
/

Justice Stevens

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: 10 JUN 1981

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-1794

State of Michigan, Petitioner, }
 v. } On Writ of Certiorari to the
 George Summers. } Supreme Court of Michigan.

[June —, 1981]

JUSTICE STEWART, dissenting.

The Court is correct in stating that "some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment." *Ante*, at 6. But to escalate this statement into some kind of a general rule is to ignore the protections that the Fourth Amendment guarantees to us all. There are only two types of seizures which need not be based on probable cause. The first, represented by the *Terry* line of cases, is a limited stop to question a person and to perform a pat-down for weapons when the police have reason to believe that he is armed and dangerous. *E. g.*, *Terry v. Ohio*, 392 U. S. 1, 23-24. The second is a brief stop of vehicles near our international borders to question occupants of the vehicles about their citizenship. *E. g.*, *United States v. Brignoni-Ponce*, 422 U. S. 873, 881.

From these two special exceptions to the general prohibition on seizures not based on probable cause, the Court leaps to the very broad idea that courts may approve a wide variety of seizures not based on probable cause, so long as the courts find, after balancing the law enforcement purposes of the police conduct against the severity of this intrusion, that the seizure appears "reasonable." *Ante*, at 8-9, and nn. 11-12. But those two lines of cases do not represent some sort of exemplary balancing text for Fourth Amendment cases. Rather, they represent two isolated exceptions to the general

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1981

Re: 79-1794 - Michigan v. Summers

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1981

Re: No. 79-1794 - Michigan v. Summers

Dear John:

I await the dissent.

Sincerely,


T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 17, 1981

Re: No. 79-1794 - Michigan v. Summers

Dear Potter:

Please join me in your dissent.

Sincerely,

JM.
T.M.

Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

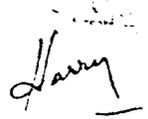
May 20, 1981

Re: No. 79-1794 - Michigan v. Summers

Dear John:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 20, 1981

79-1794 Michigan v. Summers

Dear John:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 19, 1981

Re: No. 79-1794 Michigan v. Summers

Dear John:

I am certainly in general agreement with the printed opinion you circulated on May 18th, and my concerns reflect more those of "omission" than "commission". In Part III of your opinion, beginning on page 9, although you do not make it in terms the exclusive basis for detaining the occupant of the premises, I think that part could be read as virtually requiring a warrant issued by a "neutral magistrate" as the necessary basis for any detention. It seems to me that exigent circumstances, which have always been an exception to the warrant requirement and some of which are mentioned in that part of your opinion, as well as consent of the type found in Schneckloth v. Bustamonte, 412 U.S. 218 (1972), would each justify the police conduct here. It may be that I am simply misinterpreting Part III of your opinion, but from my first reading of it it seems to be an unduly narrow justification of the police authority to temporarily "freeze" the status quo under the circumstances present here.

Sincerely,



Justice Stevens

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1981

Re: No. 79-1794 Michigan v. Summers

Dear John:

Please join me in your opinion of the Court.

Sincerely,



Justice Stevens

Copies to the Conference

JPS
Summers v. State of Michigan
M

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

From: Mr. Justice Stevens

Circulated: MAY 18 '81

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1794

State of Michigan, Petitioner, }
 v. } On Writ of Certiorari to the
 George Summers. } Supreme Court of Michigan,

[May —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

As Detroit police officers were about to execute a warrant to search a house for narcotics, they encountered respondent descending the front steps. They requested his assistance in gaining entry and detained him while they searched the premises. After finding narcotics in the basement and ascertaining that respondent owned the house, the police arrested him, searched his person, and found in his coat pocket an envelope containing 8.5 grams of heroin.¹

¹ The execution of the warrant is described in greater detail in Justice Moody's opinion for the Michigan Supreme Court:

"Upon arriving at the named address, Officer Roger Lehman saw the defendant go out the front door of the house and proceed across the porch and down the steps. When defendant was asked to open the door he replied that he could not because he left his keys inside, but he could ring someone over the intercom. Dwight Calhoun came to the door, but did not admit the police officers. As a result, the officers obtained entrance to the premises by forcing open the front door. Once admittance had been gained Officer Lehman instructed Officer Conant, previously stationed along the side of the house, to bring the defendant, still on the porch, into the house.

"After the eight occupants of the house were detained, a search of the premises revealed two plastic bags of suspected narcotics under the bar in the basement. After finding the suspected narcotics in the basement and upon determining that the defendant was the owner of the house, Officer Conant formally arrested the defendant for violation of the Controlled

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 19, 1981

Re: 79-1794 - Michigan v. Summers

Dear Bill:

Thank you for your letter commenting on Part III of my proposed opinion. I would agree, of course, that either consent or exigent circumstances might justify the detention of the occupants of a house that is being searched without a warrant, but in this case I do not believe either of those justifications would be sufficient. Since the result in other cases may well turn on the specific facts, I am inclined to think it would be unwise to try to predict when the justification would be adequate and when not. For example, if a homeowner answers the door and consents to an entry by the police, would it necessarily follow that they could detain other residents of the house while they conducted a search within the limits to which the consent applied? Or, if they were in hot pursuit of a fleeing felon who took refuge in a house, is it clear that they could detain other occupants who might have no connection with that person? In sum, I would rather wait for cases of that kind before trying to say too much about either exigent circumstances or consent.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 20, 1981

Re: 79-1794 - Michigan v. Summers

Dear Lewis:

Pursuant to our conversation, which was prompted by Bill Rehnquist's letter and my response, I should think the addition of the following footnote on page 10 should take care of the problem:

"17/ The fact that our holding today does not rest on any special circumstances does not, of course, preclude the possibility that comparable police conduct may be justified by exigent circumstances in a proper case. No such question, however, is presented by this case."

Respectfully,

J.P.

Justice Powell

cc: Justice Rehnquist

Jim Jordan

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

PP. 3-4, 10-11

From: Mr. Justice Stevens

Circulated: _____

2nd DRAFT

Recirculated: MAY 21 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1794

State of Michigan, Petitioner, }
 v. } On Writ of Certiorari to the
 George Summers. } Supreme Court of Michigan,

[May —, 1981]

JUSTICE STEVENS delivered the opinion of the Court.

As Detroit police officers were about to execute a warrant to search a house for narcotics, they encountered respondent descending the front steps. They requested his assistance in gaining entry and detained him while they searched the premises. After finding narcotics in the basement and ascertaining that respondent owned the house, the police arrested him, searched his person, and found in his coat pocket an envelope containing 8.5 grams of heroin.¹

¹ The execution of the warrant is described in greater detail in Justice Moody's opinion for the Michigan Supreme Court:

"Upon arriving at the named address, Officer Roger Lehman saw the defendant go out the front door of the house and proceed across the porch and down the steps. When defendant was asked to open the door he replied that he could not because he left his keys inside, but he could ring someone over the intercom. Dwight Calhoun came to the door, but did not admit the police officers. As a result, the officers obtained entrance to the premises by forcing open the front door. Once admittance had been gained Officer Lehman instructed Officer Conant, previously stationed along the side of the house, to bring the defendant, still on the porch, into the house.

"After the eight occupants of the house were detained, a search of the premises revealed two plastic bags of suspected narcotics under the bar in the basement. After finding the suspected narcotics in the basement and upon determining that the defendant was the owner of the house, Officer Conant formally arrested the defendant for violation of the Controlled

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 24, 1981

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 79-1794, Michigan
v. Summers

One case, United States v. Chamberlin, 80-1112, has been held for Summers. The petition presents two questions: (1) whether a brief detention of an individual reasonably suspected of criminal activity while officers searched for his escaped companion and investigated their suspicions is unlawful in the absence of probable cause to arrest; (2) whether, assuming that the detention of respondent in this case violated the Fourth Amendment, statements by witnesses indicating that respondent had attempted to negotiate a stolen check in their store must be suppressed as a fruit of that detention.

After a bench trial on stipulated facts, respondent was convicted of possession of a check stolen from the mail. The evidence at a pretrial suppression hearing established that a San Diego police officer observed respondent and a man named Franklin walking down the street. The police officer recognized them as individuals with extensive criminal records. When the officer drove past them, he noticed that they looked worried and quickened their pace. A few minutes later, the officer again spotted the men a few blocks from where they had first been seen. When respondent and Franklin noticed the patrol car again, they attempted to flee. When the officer caught up to respondent and asked him what he was doing, respondent replied that he was returning from paying his mother's bill at the Universal Furniture Store. The officer then asked why Franklin had run away, and respondent denied knowing Franklin. Knowing from past experience, however, that respondent and Franklin were well-acquainted, the officer told respondent to get into the