

The Burger Court Opinion Writing Database

Hudson v. Louisiana

450 U.S. 40 (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

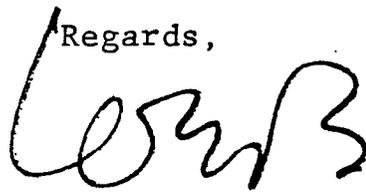
February 20, 1981

RE: 79-5688 - Hudson v. Louisiana

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'L. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 29, 1981

RE: No. 79-5688 Hudson v. Louisiana

Dear Lewis:

I'm happy to join if you can see your way to adopting Harry's suggestion to drop the last three sentences of footnote 8 and substitute language along the lines suggested by him.

Sincerely,

Bul

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 17, 1981

RE: No. 79-5688 Hudson v. Louisiana

Dear Lewis:

I join your circulation of February 5.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 28, 1981

Re: 79-5688 - Hudson v. Louisiana

Dear Lewis,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
/

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 9, 1981

Re: 79-5688 - Hudson v. Louisiana

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 2, 1981

Re: No. 79-5688 - Hudson v. Louisiana

Dear Lewis:

Please join me.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 28, 1981

Re: No. 79-5688 - Hudson v. Louisiana

Dear Lewis:

Please join me.

I wonder whether it would be advisable to drop the last three sentences of footnote 8 on page 5. Something along the lines of the following could be substituted: "Since this is not such a case, however, we need not decide the double jeopardy consequences where the trial judge grants a new trial in his capacity as a '13th juror.'"

I would also be quite content with a mere reversal rather than a reversal and remand.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

1-28-81

From Mr. Justice Powell

Circulated: JAN 28 1981

1st DRAFT Circulated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-5688

Tracy Lee Hudson, Petitioner, } On Writ of Certiorari to the
v, } Supreme Court of Loui-
State of Louisiana. } siana.

[February —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The question in this case is whether Louisiana violated the Double Jeopardy Clause, as we expounded it in *Burks v. United States*, 437 U. S. 1 (1978), by prosecuting petitioner a second time after the trial judge at the first trial granted petitioner's motion for new trial on the ground that the evidence was insufficient to support the jury's verdict of guilty.

I

Petitioner Tracy Lee Hudson was tried in Louisiana state court for first-degree murder, and the jury found him guilty. Petitioner then moved for a new trial, which under Louisiana law was petitioner's only means of challenging the sufficiency of the evidence against him.¹ The trial judge granted the

¹ Louisiana's Code of Criminal Procedure does not authorize trial judges to enter judgments of acquittal in jury trials. La. Code Crim. Proc. Ann., Art 778 (West); *State v. Henderson*, 362 So. 2d 1358, 1367 (1978). Accordingly, a criminal defendant's only means of challenging the sufficiency of evidence presented against him to a jury is a motion for new trial under La. Code Crim. Proc. Ann., Art 851 (West), which provides in pertinent part:

"The Court, on motion of the defendant, shall grant a new trial whenever:

- "(1) The verdict is contrary to the law and the evidence;
- "(2) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error;
- "(3) New and material evidence that, notwithstanding the exercise of

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pg 5

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

2-5-81

From: Mr. Justice Powell

Circulated: _____
Recirculated: FEB 5 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5688

Tracy Lee Hudson, Petitioner, | On Writ of Certiorari to the
v. | Supreme Court of Loui-
State of Louisiana. | siana.

[February —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

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"The Court, on motion of the defendant, shall grant a new trial whenever:

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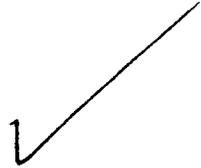
"(2) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error;

"(3) New and material evidence that, notwithstanding the exercise of

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST



January 30, 1981

Re: No. 79-5688 Hudson v. Louisiana

Dear Lewis,

I voted at conference to vacate rather than reverse the judgment of the Supreme Court of Louisiana, because I felt that the construction placed by the Supreme Court of Louisiana on the trial court's action was binding on us. I may end up with a graveyard dissent after further study of the matter, but at any rate you certainly will have your court opinion in this case. I will let you know definitely within a few days.

Sincerely,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST



February 9, 1981

Re: No. 79-5688 Hudson v. Louisiana

Dear Lewis:

After re-thinking the matter, and reading your second draft circulated February 5th to accommodate Harry's suggestions, I have decided that our earlier telephone conversation was an intrusion by me on the "latitude" of the opinion writer, who in this case is you. I will send around a separate note simply joining the second draft of your opinion.

Sincerely,

A handwritten signature, likely of Justice Powell, is written below the word "Sincerely,".

Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1981

Re: No. 79-5688 Hudson v. Louisiana

Dear Lewis:

Though I tended at Conference to place more weight on Judge Tate's separate concurrence than did the rest of the members of the Court, since he had been a Justice of the Supreme Court of Louisiana, I think you have handled the situation well in the second draft of your opinion circulated February 5th, and I hereby join it.

Sincerely,

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 2, 1981

Re: 79-5688 - Hudson v. Louisiana

Dear Lewis:

Please join me.

Although I would prefer not to modify footnote 8 as suggested by Harry, I am pleased to join you either way.

Respectfully,



Justice Powell

Copies to the Conference