

The Burger Court Opinion Writing Database

Watkins v. Sowders

449 U.S. 341 (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

January 7, 1981

RE: (79-5949 - Watkins v. Sowers
(
(79-5951 - Summitt v. Sowers)

Dear Potter:

I join.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 4, 1980

RE: Nos. 79-5949 & 5951 Watkins & Summitt v. Sowers

Dear Potter:

I will in due course circulate a dissent in the
above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", likely referring to Justice William J. Brennan, Jr.

Mr. Justice Stewart

cc: The Conference

W/S

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-5949 AND 79-5951

John Gregory Watkins, Petitioner,
79-5949 v.
Dewey Sowders, Warden.
James Willard Summitt,
Petitioner,
79-5951 v.
Dewey Sowders, Warden.

On Writs of Certiorari to
the United States Court
of Appeals for the Sixth
Circuit.

[January —, 1981]

JUSTICE BRENNAN, dissenting.

The Court holds that the Due Process Clause of the Fourteenth Amendment did not require that the trial judge in each of the instant cases hold a "fair hearing." *Jackson v. Denno*, 378 U. S. 368, 377 (1964), to decide the admissibility of eyewitness identification evidence, and that a remand is not now required to accord such a hearing. While freely conceding that a "judicial determination outside the presence of the jury of the admissibility of identification evidence may often be advisable [and i]n some circumstances . . . constitutionally necessary," *ante*, at 8, the Court holds that the Constitution does not require "a *per se* rule compelling such a procedure in every case," *ibid*. I dissent. In my view, the Due Process Clause mandates such a hearing whenever a defendant, as both petitioners did at their respective trials below, has proffered some evidence that pretrial police procedures directed at identification were impermissibly suggestive. The flaw in the Court's reasoning lies in its statement that identification evidence does not implicate the "special considerations" on which *Jackson v. Denno* relied to "justify a departure from the presumption that juries will follow in-

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PP 3, 5, 6, 8

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: _____

Recirculated: 4 DEC 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79-5949 AND 79-5951

John Gregory Watkins, Petitioner,
79-5949 v.
Dewey Sowders, Warden,
James Willard Summitt,
Petitioner,
79-5951 v.
Dewey Sowders, Warden,

On Writs of Certiorari to
the United States Court
of Appeals for the Sixth
Circuit.

[December —, 1980]

JUSTICE STEWART delivered the opinion of the Court.

These cases, consolidated for argument and decision in the Court of Appeals and in this Court, present the question whether a state criminal trial court is constitutionally compelled to conduct a hearing outside the presence of the jury whenever a defendant contends that a witness' identification of him was arrived at improperly.

I

A

John Watkins, the petitioner in No. 79-5949, was convicted in a Kentucky court of attempting to rob a Louisville liquor store. On the night of January 11, 1975, four men entered the store, one of whom asked for a pack of cigarettes. Walter Smith, an employee of the store, turned around to get the cigarettes, and one of the men said, "This is a hold-up." Donald Goeing, a part-owner of the store, had been stocking a soft-drink cooler, and when he heard those words, he turned towards the robbers. The man who had spoken thereupon

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 14, 1981

MEMORANDUM TO THE CONFERENCE

Re: Case held for Nos. 79-5949 and 79-5951 - Watkins
v. Sowers and Summitt v. Sowers

79-6436 - Ray v. Sowers

The petitioner was convicted in the Kentucky courts of robbery. His subsequent petition for a writ of federal habeas corpus was based on the argument that he was constitutionally entitled to a hearing outside the presence of the jury on the admissibility of identification evidence. The Court of Appeals for the Sixth Circuit affirmed the denial of the petition on the grounds that the petitioner's counsel had failed to request such a hearing and that the Sixth Circuit had decided in Summit v. Bordenkircher that no such hearing was required. This Court denied a petition for a writ of certiorari. The petitioner now seeks a rehearing. Since the issue raised by the petitioner was decided against him in this Court's decision in Watkins v. Sowers and its companion case, I shall vote to deny the petition for rehearing in this case.

U.S.
/

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

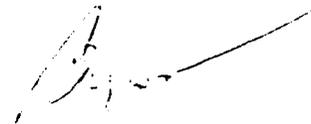
December 4, 1980

Re: 79-5949: Watkins v. Sowers
79-5951: Summitt v. Sowers

Dear Potter,

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

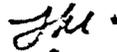
December 4, 1980

Re: Nos. 79-5949 and 79-5951 - Watkins v. Sowders

Dear Potter:

I await the dissent.

Sincerely,


T.M.

Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1981

Re: Nos. 79-5949 and 5951 - Watkins v. Sowers
and Summitt v. Sowers

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

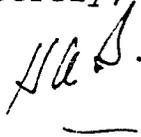
December 4, 1980

Re: No. 79-5949 - Watkins v. Sowders
No. 79-5951 - Summitt v. Sowders

Dear Potter:

Please join me.

Sincerely,

Handwritten signature of H.A.S. with a horizontal line underneath.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1980

79-5949 Watkins v. Sowders
79-5951 Summit v. Sowders

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart :

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

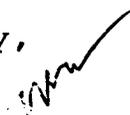
December 4, 1980

Re: Nos. 79-5949 & 79-5951 Watkins v. Sowders

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

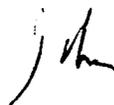
December 4, 1980

Re: 79-5949 and 79-5951 - Watkins
v. Sowers

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

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