

The Burger Court Opinion Writing Database

Allen v. McCurry

449 U.S. 90 (1980)

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

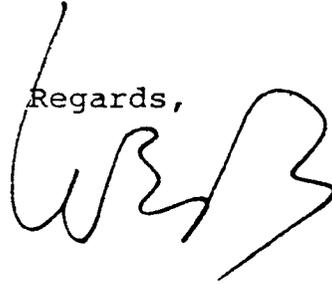
November 21, 1980

Re: No. 79-935 - Marvin Allen et al., v.
Willie McCurry

Dear Potter,

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WB', written over the typed word 'Regards,'.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 14, 1980

RE: No. 79-935 Allen v. McCurry

Dear Harry:

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

Sincerely,

Bill

Mr. Justice Blackmun

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 26, 1980

RE: No. 79-935 Allen v. McCurry

Dear Harry:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

December 1, 1980

Re: No. 79-935 - Allen v. McCurry

Dear Harry:

I agree that there is no substantial reason for making any changes in the dissent.

Sincerely,



Mr. Justice Blackmun

Brennan 80

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

From: Mr. Justice Stewart

Circulated: 4 NOV 1980

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-935

Marvin Allen et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Willie McCurry. } Appeals for the Eighth
Circuit.

[November —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

At a hearing before his criminal trial in a Missouri court, the respondent, Willie McCurry, invoked the Fourth and Fourteenth Amendments to suppress evidence that had been seized by the police. The trial court denied the suppression motion in part, and McCurry was subsequently convicted after a jury trial. The conviction was later affirmed on appeal. *State v. McCurry*, 587 S. W. 2d 337 (Mo. Ct. App.). Because he did not assert that the state courts had denied him a "full and fair opportunity" to litigate his search and seizure claim, McCurry was barred by this Court's decision in *Stone v. Powell*, 428 U. S. 465, from seeking a writ of habeas corpus in a federal district court. Nevertheless, he sought federal court redress for the alleged constitutional violation by bringing a damage suit under 42 U. S. C. § 1983 against the officers who had entered his home and seized the evidence in question. We granted certiorari to consider whether the unavailability of federal habeas corpus prevented the police officers from raising the state courts' partial rejection of McCurry's constitutional claim as a collateral estoppel defense to the § 1983 suit against them for damages. —
U. S. —.

I

In April 1977, several undercover police officers, following an informant's tip that McCurry was dealing in heroin, went

See n. 24

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Rehnquist
Mr. Justice Stevens
Mr. Justice Souter
Mr. Justice Ginsburg
Mr. Justice Breyer

From: Mr. Justice Stewart

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-935

Marvin Allen et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Willie McCurry. } Appeals for the Eighth
Circuit.

[November —, 1980]

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See paras 5, 7, 17

and here for
numbers 18-25

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Stevens
Mr. Justice O'Connor
Mr. Justice Souter
Mr. Justice Ginsburg

Copy: Mr. Justice Stewart

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Revised: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-935

Marvin Allen et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Willie McCurry. } Appeals for the Eighth
Circuit.

[November —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

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U. S. —.

I

In April 1977, several undercover police officers, following an informant's tip that McCurry was dealing in heroin, went

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5, 8, 10, 11

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

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4th DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 79-935

Marvin Allen et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Willie McCurry. } Appeals for the Eighth
Circuit.

[November —, 1980]

JUSTICE STEWART delivered the opinion of the Court.

At a hearing before his criminal trial in a Missouri court, the respondent, Willie McCurry, invoked the Fourth and Fourteenth Amendments to suppress evidence that had been seized by the police. The trial court denied the suppression motion in part, and McCurry was subsequently convicted after a jury trial. The conviction was later affirmed on appeal. *State v. McCurry*, 587 S. W. 2d 337 (Mo. Ct. App.). Because he did not assert that the state courts had denied him a "full and fair opportunity" to litigate his search and seizure claim, McCurry was barred by this Court's decision in *Stone v. Powell*, 428 U. S. 465, from seeking a writ of habeas corpus in a federal district court. Nevertheless, he sought federal court redress for the alleged constitutional violation by bringing a damage suit under 42 U. S. C. § 1983 against the officers who had entered his home and seized the evidence in question. We granted certiorari to consider whether the unavailability of federal habeas corpus prevented the police officers from raising the state courts' partial rejection of McCurry's constitutional claim as a collateral estoppel defense to the § 1983 suit against them for damages. — U. S. —.

I

In April 1977, several undercover police officers, following an informant's tip that McCurry was dealing in heroin, went

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 11, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 79-935, Allen v. McCurry

The only case held is NO. 79-1679, Waste Management of Wisconsin v. Fokakis. In that case, Petitioner, a corporation, was criminally prosecuted under the state's "Little Sherman Act" and fined \$4,000. In the state criminal proceedings, Petitioner raised several constitutional claims concerning evidentiary rulings, prejudicial remarks of the prosecutor, and erroneous jury instructions. The Wisconsin Supreme Court rejected all these claims. Petitioner then brought a § 1983 suit in federal district court against the clerk of the state court, seeking, among other things, a declaration that its conviction was unconstitutional. The DC dismissed the suit and the CA 7 (per Judge Wood) affirmed, reasoning that the exclusive federal district court remedy for an allegedly unconstitutional state conviction is § 2254, and that Petitioner, as a corporation and not an individual, obviously could not meet the "in custody" requirement of the statute. Petitioner argued to the CA that general principles of federal jurisdiction guarantee a party claiming a federal right at least one opportunity to bring that claim in federal district court. Petitioner therefore relied on the CA 8 decision in McCurry v. Allen.

In reversing that decision, we rejected the view that either § 1983 or some general principle of federal jurisdiction guaranteed a claimant access to district court under § 1983 when some independent factor -- in that case Stone v. Powell -- denied the claimant access to district court by an otherwise conventional route. To the extent the CA 7 decision in 79-1679 overlaps with the issue in McCurry, the Court's holding in McCurry clearly supports the CA 7.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 6, 1980

Re: No. 79-935, Allen v. McCurry

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 6, 1980

Re: No. 79-935 - Allen v. McCurry

Dear Potter:

I await the dissent.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 1, 1980

Re: No. 79-935 - Allen v. McCurry

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

OCTOBER 14, 1960

Re: No. 70-935 - Allen v. McCurry

Dear Bill:

In response to your note of today, I shall be glad to undertake a dissent in this case.

Sincerely,

W. Justice Brennan
cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 4, 1980

Re: No. 79-935 - Allen v. McCurry

Dear Potter:

I shall try my hand at a dissent in this case. It will be around in due course.

Sincerely,



Mr. Justice Stewart

cc: The Conference

Mr. The Chief Justice
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-935

Marvin Allen et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Willie McCurry. } Appeals for the Eighth
Circuit.

[December —, 1980]

JUSTICE BLACKMUN, dissenting.

The legal principles with which the Court is concerned in this civil case obviously far transcend the ugly facts of respondent's criminal convictions in the courts of Missouri for heroin possession and assault.

The Court today holds that notions of collateral estoppel apply with full force to this suit brought under 42 U. S. C. § 1983. In my view, the Court, in so ruling, ignores the clear import of the legislative history of that statute and disregards the important federal policies that underlie its enforcement. It also shows itself insensitive both to the significant differences between the § 1983 remedy and the exclusionary rule, and to the pressures upon a criminal defendant that make a free choice of forum illusory. I do not doubt that principles of preclusion are to be given such effect as is appropriate in § 1983 action. In many cases, the denial of res judicata or collateral estoppel effect would serve no purpose and would harm relations between federal and state tribunals. Nonetheless, the Court's analysis in this particular case is unacceptable to me. It works injustice on this § 1983 plaintiff, and it makes more difficult the consistent protection of constitutional rights, a consideration that was at the core of the enactors' intent. Accordingly, I dissent.

In deciding whether a common law doctrine is to apply to § 1983 when the statute is silent, prior cases uniformly have

itself

THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

November 28, 1980

Re: No. 79-935 - Allen v. McCurry

Dear Bill:

Potter has responded to our dissent in this case by a number of footnotes. I find those footnotes interesting, for it seems to me that they substantially narrow his opinion. One might well argue that they narrow it so much that the only point on which there is disagreement between Potter's opinion and the dissent is on the meaning of the legislative history and prior precedent of this Court. I think the result is good and beneficial.

As it now stands, I think it could be said that the Court reverses the Court of Appeals only for its conclusion that the lack of habeas requires the provision of a federal forum. I cannot disagree with Potter on that narrow issue, but, of course, the dissent would rather affirm the Court of Appeals on our different analysis. I think that the problem with the Court's opinion now is that it does not give the lower courts much direction, or any direction at all, as to how to go about applying collateral estoppel rules. For this reason, I am quite content to leave the dissent just as it is, for it may serve as a little encouragement to the lower courts to apply preclusion rules carefully and consider the factors we have mentioned.

I see no reason to make any changes in our dissent. Do you agree?

Sincerely,

HAB

Mr. Justice Brennan

OK
SGL

STYLISTIC CHANGES

and n.1

12

Supreme Court of the United States
Washington, D.C. 20540
Tel. (202) 544-6000
Fax (202) 544-6000
www.supremecourt.gov

From Mr. Justice Blackmun

Revised: _____

Recirculated: DEC 1 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-935

Marvin Allen et al., Petitioners, } On Writ of Certiorari to the
v. } United States Court of
Willie McCurry. } Appeals for the Eighth
Circuit.

[December —, 1980]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN joins, dissenting.

The legal principles with which the Court is concerned in this civil case obviously far transcend the ugly facts of respondent's criminal convictions in the courts of Missouri for heroin possession and assault.

The Court today holds that notions of collateral estoppel apply with full force to this suit brought under 42 U. S. C. § 1983. In my view, the Court, in so ruling, ignores the clear import of the legislative history of that statute and disregards the important federal policies that underlie its enforcement. It also shows itself insensitive both to the significant differences between the § 1983 remedy and the exclusionary rule, and to the pressures upon a criminal defendant that make a free choice of forum illusory. I do not doubt that principles of preclusion are to be given such effect as is appropriate in a § 1983 action. In many cases, the denial of res judicata or collateral estoppel effect would serve no purpose and would harm relations between federal and state tribunals. Nonetheless, the Court's analysis in this particular case is unacceptable to me. It works injustice on this § 1983 plaintiff, and it makes more difficult the consistent protection of constitutional rights, a consideration that was at the core of the enactors' intent. Accordingly, I dissent.

In deciding whether a common law doctrine is to apply to § 1983 when the statute itself is silent, prior cases uniformly

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 17, 1980

79-935 Allen v. McCurry

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 6, 1980

Re: No. 79-935 Allen v. McCurry

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

November 6, 1980

Re: 79-935 - Allen v. McCurry

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

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