The Burger Court Opinion Writing Database

Washington v. Chrisman

455 U.S. 1 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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: MAY 5 1981

Recirculated: _____

No. 80-1349, Washington v. Chrisman

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code §66.44.270,[1] and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.[2]

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when

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[1]University regulations also forbade possession of alcoholic beverages on university property. Tr. 4.

[2]While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

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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: _____

1st PRINTED DRAFT Recirculated: MAY 11 1981

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON *v.* NEIL MARTIN CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 80-1349. Decided May —, 1981

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code § 66.44.270,[1] and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.[2]

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marihuana and the pipe was of a type used to smoke marihuana. He then went over to

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[1] University regulations also forbade possession of alcoholic beverages on university property. Tr. 4, 34.

[2] While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1349, Washington v. Chrisman

In the interest of getting this case moving, I am proposing a modification. Byron has raised an interesting issue regarding the scope of the "plain view" doctrine--i.e., whether a police officer may enter a dwelling without a warrant when he sees contraband from the outside. I believe we should address this problem at some point, but this is probably not the case in which to do so. First, this is a dormitory room; we would be better off reaching this issue for the first time in the context of a private home. Second, the Washington Supreme Court expressly held that the officer was already inside the room when he first observed the contraband; thus, the issue is not squarely presented. Third, since Overdahl was under arrest, the officer could have followed him into the room in any event to maintain the arrest custody.

Although I continue to believe going over to the table would have been permissible even if the officer had first noticed the marijuana while standing completely outside the dormitory room--and although four have joined on this point--I am prepared to yield to avoid granting this case. My primary concern from the start--with which no one seems to have disagreed--has been the Washington Supreme Court's holding that a police officer may not keep a lawfully arrested person in sight absent some affirmative indication that his safety is endangered, that evidence might be destroyed, or that the arrestee might escape. I therefore am willing to modify my per curiam to hold only that the officer's observation of the pipe and seeds was permissible. The opinion would then vacate and remand, leaving the respondent free to raise Byron's point--or the other elements of "plain view"--on remand.

I attach a typed revision of the final two paragraphs that decides the case along these lines.

Regards,

WEB

Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

pp. 3-4

PROPOSED MODIFIED DRAFT Recirculated: JUNE 10,

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON v. NEIL MARTIN
CERTIFICATION

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 80-1349. Decided May —, 1981

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code § 66.44.270,[1] and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.[2]

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marihuana and the pipe was of a type used to smoke marihuana. He then went over to

[1] University regulations also forbade possession of alcoholic beverages on university property. Tr. 4, 34.

[2] While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1349, Washington v. Chrisman

I still would like to correct the primary defect of the Washington Supreme Court's decision--i.e., its holding that a police officer may not keep an arrestee in sight--without using the "poor" facts of this case for resolving, one way or another, whether a warrant is required to enter a dwelling when contraband is seen in "plain view" from the outside. Therefore, I am willing to add a footnote expressly saying that other elements of the "plain view" doctrine remain unresolved in this case. I am not willing, however, to go along with Byron's proposed final paragraph, which, as I read it, would decide that a warrant ordinarily is needed under such circumstances. I continue to disagree with that position, and Potter, Harry, Lewis, and Bill Rehnquist seemed to share my view.

I do not know how the Washington Supreme Court will resolve this question, if Chrisman raises it. I still am convinced that (a) we need not reach this issue in this case and (b) we would be better off addressing it in a case without so many factual problems.

Regards,

WEB

pp. 3-4

Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

REVISED PROPOSED DRAFT Recirculated: JUNE 16, _____

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON *v.* NEIL MARTIN CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 80-1340. Decided May —, 1981

PER CURIAM.

A campus police officer at Washington State University observed a male youth, Carl Overdahl, exit a student dormitory carrying a half-gallon bottle of gin. Because Washington law forbids possession of alcoholic beverages by persons under 21, Wash. Rev. Code § 66.44.270,[1] and Overdahl appeared to be under age, the officer stopped him and asked for identification. Overdahl replied that he would have to return to his room to obtain identification. The officer accompanied him.[2]

The room was approximately 11 by 17 feet and located on the 11th floor of the dormitory. The respondent, Overdahl's roommate, was in the room when the officer and Overdahl arrived. The officer remained in the doorway when Overdahl went inside. The respondent became visibly nervous at the sight of the officer.

While waiting, the officer observed seeds and a small pipe lying on a table in the room. From his training and experience, he believed the seeds were marihuana and the pipe was of a type used to smoke marihuana. He then went over to

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[1] University regulations also forbade possession of alcoholic beverages on university property. Tr. 4, 34.

[2] While waiting for the elevator, the officer asked Overdahl his age. Overdahl responded that he was 19. The respondent did not argue in the Washington courts or in his Brief in Opposition here that this admission eliminated the need for Overdahl to produce identification and thus invalidates the visit to the room.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 8, 1981

RE: No. 80-1349 Washington v. Chrisman

Dear Byron:

Please join me in your dissent in the above.

Sincerely,

Bill

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 22, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 80-1349 Washington v. Chrisman

After reading the exchanges between the Chief and Byron I am going to vote to grant and hear this case.

Bill

W.J.B., Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 6, 1981

Re: No. 80-1349, Washington v. Chrisman

Dear Chief,

I agree with the proposed per curiam you have circulated.

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

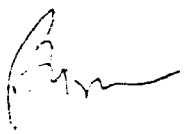
May 6, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief,

I am doubtful that I can join your suggested Per Curiam because it extends the plain view doctrine beyond its previous bounds. Perhaps entry into the room could be justified on another ground but I have my doubts about the rationale you use. I am considering writing a dissent.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

From: Mr. Justice White

No. 80-1349 - Washington v. Chrisman

Circulated: 7 MAY 81

Recirculated: _____

I dissent. In this summary disposition, the Court substantially expands the scope of the plain view doctrine and wholly fails to acknowledge that expansion, characterizing this as a "classic case" for application of the plain view doctrine. Ante, at ___.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. However, the issue in this case is whether, having made that observation, the officer was authorized to enter the dormitory room without a warrant to examine and seize those items.[1] The Court holds that this warrantless entry and seizure was justified by the "plain view" doctrine.[2]

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[1]The officer testified at the suppression hearing that the only reason he entered the room was to examine the seeds and the pipe more closely and to seize them if he determined that they were contraband. The pipe was made out of a seashell, so the officer needed to examine it to determine whether it was a pipe and whether it had been used for smoking marijuana. The seeds were on a tray, apart from the pipe. The officer testified that when he looked at these seeds from the doorway he thought they were marijuana seeds. However, he found it difficult to explain how he had been able to distinguish the seeds from other types of seeds. Tr., 51. The officer explained that he had entered the room for just one purpose--"to affirm my beliefs and to seize the articles, if they were [contraband]." Tr., p. 44.

Footnote(s) 2 appear on following page(s).

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: + note 4.

From: Mr. Justice White

1st PRINTED DRAFT

Circulated: _____

Recirculated: 22 MAY 1981

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON *v.* NEIL MARTIN CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 80-1349. Decided May —, 1981

JUSTICE WHITE, dissenting.

I dissent. In this summary disposition, the Court substantially expands the scope of the plain view doctrine and wholly fails to acknowledge that expansion, characterizing this as a "classic case" for application of the plain view doctrine. *Ante*, at —.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. However, the issue in this case is whether, having made that observation, the officer was authorized to enter the dormitory room without a warrant to examine and seize those items.[1] The Court holds that this warrantless entry and seizure was justified by the "plain view" doctrine.[2]

[1] The officer testified at the suppression hearing that the only reason he entered the room was to examine the seeds and the pipe more closely and to seize them if he determined that they were contraband. The pipe was made out of a seashell, so the officer needed to examine it to determine whether it was a pipe and whether it had been used for smoking marihuana. The seeds were on a tray, apart from the pipe. The officer testified that when he looked at these seeds from the doorway he thought they were marihuana seeds. However, he found it difficult to explain how he had been able to distinguish the seeds from other types of seeds. Tr., 51. The officer explained that he had entered the room for just one purpose—"to affirm my beliefs and to seize the articles, if they were [contraband]." Tr., p. 44.

[2] Although I do not entirely agree with the Supreme Court of Wash-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief,

I have substantially revised my writing in this case as the enclosed will indicate. It is at the printer.

Sincerely yours,

The Chief Justice

Copies to the Conference

cpm

SUBSTANTIALLY REWRITTEN

No. 80-1349 - Washington v. Chrisman

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

From: Mr. Justice White

Circulated: 21 MAR 1983

Recirculated: _____

JUSTICE WHITE, concurring in the result.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. Yet I do not agree that the officer entered the room by standing in the doorway. The officer's subsequent warrantless entry into the room to seize the seeds and pipe cannot be justified by relying solely on the plain view doctrine. Therefore, I would vacate the judgment and remand the case to enable the Supreme Court of Washington to determine whether exigent circumstances justified this warrantless entry and whether the officer had probable cause to believe that the items he saw inside the room were contraband.

The officer testified at the suppression hearing that he had not physically entered the room while he was observing Overdahl, and that he had subsequently entered the room solely to confirm his suspicion that the seeds and the seashell he had observed from the doorway were marihuana seeds and a seashell pipe that had been used to smoke marihuana. The officer's uncontradicted testimony establishes that he remained in the doorway until he entered the room to examine the seeds and pipe.[1] The Court

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Footnote(s) 1 appear on following page(s).

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON *v.* NEIL MARTIN CHRISMAN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 80-1349. Decided May —, 1981

JUSTICE WHITE, concurring in the result.

I do not quarrel with the Court's assertion that the officer had a right to stand in the doorway of respondent's dormitory room to keep Overdahl in view and that the officer's observation of the seeds and pipe from that vantage point did not violate the Fourth Amendment. Yet I do not agree that the officer entered the room by standing in the doorway. The officer's subsequent warrantless entry into the room to seize the seeds and pipe cannot be justified by relying solely on the plain view doctrine. Therefore, I would vacate the judgment and remand the case to enable the Supreme Court of Washington to determine whether exigent circumstances justified this warrantless entry and whether the officer had probable cause to believe that the items he saw inside the room were contraband.

The officer testified at the suppression hearing that he had not physically entered the room while he was observing Overdahl, and that he had subsequently entered the room solely to confirm his suspicion that the seeds and the seashell he had observed from the doorway were marihuana seeds and a seashell pipe that had been used to smoke marihuana. The officer's uncontradicted testimony establishes that he remained in the doorway until he entered the room to examine the seeds and pipe.[1] The Court apparently has determined

[1] The officer testified:

"I stood in the doorway without entering, actually physically entering the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-1349, Washington v. Chrisman

In response to the Chief Justice's circulation, I should say that the Chief Justice previously asked me whether I would be able to join his opinion if he made essentially the same changes he proposes in his circulation. I responded that the proposed changes did not overcome our differences in this case, and I countered by suggesting that the last two paragraphs of the opinion be modified to read as follows:

> "We believe the Supreme Court of Washington erred in holding the officer had no right to stand in the doorway. That court concluded that the officer had lawfully placed Overdahl under arrest and therefore was permitted to follow him to his room. The Fourth Amendment does not deny a police officer who lawfully has taken a person into custody the authority to keep that individual in sight. The absence of an affirmative indication that a particular arrestee might reach for a weapon, destroy evidence, or attempt to escape does not vitiate that authority. See Pennsylvania v. Mimms, 434 U.S. 106, 109-110 (1977); United States v. Robinson, 414 U.S. 218, 234-236 (1973). Here, the officer did not, upon his arrival, undertake a complete search of the room, including areas completely out of reach of the arrestee. Cf. Chimel v. California, 395 U.S. 742, 763 (1969). Rather, with what seems to us appropriate restraint, he stood in the doorway, proceeding no farther than was necessary to keep the arrested person in view. It was only by chance that, from this vantage point, the officer observed on a table what he believed was contraband.

Nothing in the Fourth Amendment prohibits the officer from being where he was when he made this observation. If the officer was 'in' the room we are quite sure he was legally there; and if from that vantage point he reasonably believed that what he saw on the table was contraband, he could seize that material without a warrant. Our 'plain view' cases indicate as much. On the other hand, if he was not 'in' the room, the plain view doctrine would not itself justify his entry into the room even if he had probable cause to believe that what he saw was contraband. A warrantless entry would be proper only if there were exigent circumstances, which may or may not have been present in this case. Accordingly, we grant the petition for writ of certiorari, vacate the judgment of the Supreme Court of Washington and remand the case for further proceedings not inconsistent with this opinion."

As I understand it, the Chief Justice found my suggested revision unacceptable because it recognizes that although an officer's lawful observations from outside a dwelling may give him probable cause to believe that there is incriminating evidence inside the dwelling, the plain view doctrine alone does not justify a warrantless entry to seize that evidence. I would rather grant the petition for a writ of certiorari and hear the case than join the per curiam with the Chief Justice's suggested revision. I believe the Washington Supreme Court would interpret the Chief Justice's opinion as strongly suggesting that whether or not the officer had "entered" the room by standing in the doorway, the plain view doctrine alone permitted him to seize these items without a warrant.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1981

Re: No. 80-1349 - Washington v. Chrisman

Dear Byron:

Please join me in your dissent.

Sincerely,

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 20, 1981

Re: No. 80-1349 - Washington v. Chrisman

Dear Chief:

Byron apparently is making no response to your recirculation of May 11. I therefore join that circulation.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 7, 1981

80-1349 Washington v. Chrisman

Dear Chief:

I agree with your Per Curiam in this case.

Sincerely,

L. Lewis

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 6, 1981

Re: No. 80-1349 Washington v. Chrisman

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 8, 1981

Re: 80-1349 - Washington v. Chrisman

Dear Chief:

After reading Byron's circulation, I am firmly convinced that it would be a mistake to dispose of this case summarily. I therefore will not be able to join your proposed Per Curiam.

Because we have had our quota of Fourth Amendment cases, my first preference is still to deny the petition for certiorari. However, rather than have the issues decided summarily, I would vote to grant. In the event that the case is granted, I would like to suggest that the parties be directed to argue two separate questions:

(1) Whether a warrantless entry into a dwelling can be justified on the ground that contraband is in plain view of an officer outside the dwelling; and

(2) whether the "plain view" doctrine requires not only that the object be plainly visible, but also that it is plain that the officer has a right to search it or to examine it.

With respect to the latter question, I suppose there are at least three possible answers:

(a) That the article merely be suspicious in character, as was the case of the sea shell here;

(b) that there is probable cause to believe that it is contraband; or

(c) that there is a virtual certainty that the item is associated with criminal activity.

Respectfully,

The Chief Justice

Copies to the Conference