

The Burger Court Opinion Writing Database

United States v. Ross

456 U.S. 798 (1982)

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

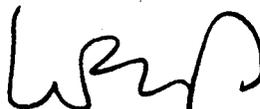
October 7, 1981

Re: No. 80-2209 - United States v. Ross

Dear John:

I agree with the September 29 proposed order.

Regards,

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

Justice Stevens
Copies to the Conference

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

RECEIVED
CHAMBERS OF THE
CHIEF JUSTICE

JLH

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

1982 MAR 4 AM 9 24

March 3, 1982

80-2209 United States v. Ross

Dear Chief:

My vote in this case is to reverse.

I would reach this conclusion under the analysis of my concurring opinion last Term in Robbins. I agree with the SG that one has no reasonable expectation of privacy in a paper bag of the type involved in this case. It was not sealed and there was no other evidence of a privacy expectation.

There are five votes to adopt the Carroll automobile exception: that wherever there is probable cause to search an automobile, the entire vehicle and all of its contents may be searched without a warrant. I do not think this would require reversal of Chadwick and Sanders for the reasons you and I have stated. It would require reversal of Robbins, as well as a rejection of the line of reasoning stated in my concurring opinion in that case.

In these circumstances, I must decide whether to adhere to the views I expressed last Term in Robbins or join an opinion that defines the scope of the automobile search as indicated above. I am not at rest as between these choices and will await the writing of the Court opinion.

Sincerely

The Chief Justice

Copies to the Conference

lfp/ss

Lewis
Good!
Did you see the Barbash piece in the POST? Silly or not, it is a problem which the Bar is also raising. The question: more and more, do my letters on any measure
Yes
CSH

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

CHAMBERS OF
THE CHIEF JUSTICE

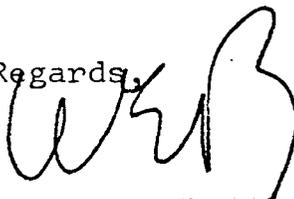
May 19, 1982
MAY 19 01 YAM '82

Re: No. 80-2209 - U.S. v. Ross

Dear John:

I will be joining you in this case, subject to a few suggestions which I doubt will give you any problems.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 26, 1982

Re: No. 80-2209 - U.S. v. Ross

Dear John:

This will confirm my "private" join subject
to the minor suggestions I made.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

September 30, 1981

RE: No. 80-2209 United States v. Ross

Dear John:

Your Order of September 29 in the above is agreeable
with me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 20, 1982

RE: No. 80-2209 United States v. Ross

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

85 497 50 113 157

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 11, 1982

Re: 80-2209 - United States v. Ross

Dear John,

I shall await the dissent.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

.85 MAY 11 1982

To: The Chief Justice
Justice Brennan
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: 5/21/82

Recirculated: _____

Re: 80-2209 - Ross v. United States

JUSTICE WHITE, dissenting:

I would not overrule Robbins v. California, 453 U.S. 420 (1981). For the reasons stated by Justice Stewart in that case, I would affirm the judgment of the Court of Appeals. I also agree with much of Justice Marshall's dissent in this case.

To: The Chief Justice
Justice Brennan
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: _____

Recirculated: _____ 24 MAY 1982

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.*
ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE WHITE, dissenting:

I would not overrule *Robbins v. California*, 453 U. S. 420 (1981). For the reasons stated by Justice Stewart in that case, I would affirm the judgment of the Court of Appeals. I also agree with much of Justice Marshall's dissent in this case.

95 MAY 24 1982

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 6, 1982

Re: No. 80-2209 - United States v. Ross

Dear John:

"In due course" I shall circulate a dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

United States v. Ross, 80-2209

JUSTICE MARSHALL, dissenting.

The majority today pronounces a new, expanded rule for warrantless automobile searches. According to the majority, whenever police have probable cause to believe that contraband may be found within an automobile that they have stopped on the highway,¹ they may search not only the automobile but also any container within it, without obtaining a warrant. The scope of the search, we are told, is as broad as a magistrate could authorize in a warrant to search the automobile. The majority makes little attempt to justify this rule in terms of recognized Fourth Amendment values. In brief, although the Court purports to rely exclusively on the mobility of an automobile and the concomitant impracticability of obtaining a warrant, it never satisfactorily explains why these concerns permit the warrantless search of a container, which can easily be seized and immobilized while police are obtaining a warrant. Moreover, the majority opinion ignores this Court's precedents, is internally inconsistent, and produces anomalous and unjust consequences. I therefore dissent.

¹The Court confines its holding today to automobiles stopped on the highway which police have probable cause to believe contain contraband. I do not understand the Court to address the applicability of the automobile exception rule announced today to parked cars. Cf. Coolidge v. New Hampshire, 403 U.S. 443 (1971).

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.*
 ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE MARSHALL, dissenting.

The majority today not only repeals all realistic limits on warrantless automobile searches, it repeals the Fourth Amendment warrant requirement itself. By equating a police officer's estimation of probable cause with a magistrate's, the Court utterly disregards the value of a neutral and detached magistrate. For as we recently, and unanimously, reaffirmed:

"The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause to believe that a crime has been committed and that the person or place named in the warrant is involved in the crime. Thus, an issuing magistrate must meet two tests. He must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search. This Court long has insisted that inferences of probable cause be drawn by 'a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Shadwick v. City of Tampa*, 407 U. S. 345, 350 (1972), citing *Johnson v. United States*, 333 U. S. 10, 14 (1948).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 30, 1981

Re: No. 80-2209 - United States v. Ross

Dear John:

The proposed form of order has my approval.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

85 19 81 111 58

From: **Justice Blackmun**Circulated: MAY 18 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 80-2209

UNITED STATES, PETITIONER *v.* ALBERT ROSS, JR.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE BLACKMUN, concurring.

My dissents in prior cases have indicated my continuing dissatisfaction and discomfort with the Court's vacillation in what is rightly described as "this troubled area." *Ante*, at 18. See *United States v. Chadwick*, 433 U. S. 1, 17 (1977); *Arkansas v. Sanders*, 442 U. S. 753, 768 (1979); *Robbins v. California*, 453 U. S. 420, 436 (1981).

I adhere to the views expressed in those dissents. It is important, however, not only for the Court as an institution, but also for law enforcement officials and defendants, that the applicable legal rules be clearly established. JUSTICE STEVENS' opinion for the Court now accomplishes much in this respect, and it should clarify a good bit of the confusion that has existed. In order to have an authoritative ruling, I join the Court's opinion and judgment.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

September 30, 1981

80-2209 United States v. Ross

Dear John:

The proposed form of order has my approval.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Powell", is written in black ink.

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
 JUSTICE LEWIS F. POWELL, JR.

March 3, 1982

80-2209 United States v. Ross

Dear Chief:

My vote in this case is to reverse.

I would reach this conclusion under the analysis of my concurring opinion last Term in Robbins. I agree with the SG that one has no reasonable expectation of privacy in a paper bag of the type involved in this case. It was not sealed and there was no other evidence of a privacy expectation.

There are five votes to adopt the Carroll automobile exception: that wherever there is probable cause to search an automobile, the entire vehicle and all of its contents may be searched without a warrant. I do not think this would require reversal of Chadwick and Sanders for the reasons you and I have stated. It would require reversal of Robbins, as well as a rejection of the line of reasoning stated in my concurring opinion in that case.

In these circumstances, I must decide whether to adhere to the views I expressed last Term in Robbins or join an opinion that defines the scope of the automobile search as indicated above. I am not at rest as between these choices and will await the writing of the Court opinion.

Sincerely

Lewis

The Chief Justice

Copies to the Conference

lfp/ss

May 10, 1982

80-2209 United States v. Ross

Dear John:

In effect, my vote at Conference was to "join five" to give a strong Court for a uniform rule in an area where law enforcement and courts need clear guidance.

I think you have written an excellent opinion. For the present, however, I will await the writing by other Justices.

If I join you, I probably will write briefly in concurrence. Your opinion rejects some of the reasoning in Sanders, and particularly rejects the view I have expressed several times as to the relevance of a "reasonable expectation of privacy". I continue to think that this is a relevant factor in Fourth Amendment analysis. I therefore would not agree with all that you say in Part IV, but would try to join enough of your opinion to leave its basic holding supported by six Justices.

I am sending this letter only to you for your information.

Sincerely,

Justice Stevens

lfp/ss

May 25, 1982

80-2209 United States v. Ross

Dear John:

I am circulating an Atex copy of a brief concurring opinion. This will give you a solid Court for a final opinion.

I would appreciate your adding a sentence in n. 32, p. 25, along the lines of the rider that I have attached to the enclosed copy of p. 25.

Sincerely,

Justice Stevens

LFP/vde

Sent to John
with my letter of
5/25

File

in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container. An individual undoubtedly has a significant interest that the upholstery of his automobile will not be ripped or a hidden compartment within it opened. These interests must yield to the authority of a search, however, which—in light of *Carroll*—does not itself require the prior approval of a magistrate. The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.³²

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

³² In choosing to search without a warrant on their own assessment of probable cause, police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional. Cf. *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U. S. 388. ~~A warrant issued by a magistrate will generally establish that officers acted in good faith in conducting the search.~~ Cf. *Carroll, supra*, at 156 ("In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.").

special

Rider

normally
suffices
to establish it.

W

1
e

To: The Chief Justice
Justice Brennan

5/25/82

MAY 25 1982

80-2209 United States v. Ross

JUSTICE POWELL, concurring.

In my opinion in Robbins v. California, _____ U.S. _____ (1981), concurring in the judgment, I stated that the judgment was justified, though not compelled, by the Court's opinion in Arkansas v. Sanders, 442 U.S. 756 (1979). I did not agree, however, with the "bright line" rule articulated by the plurality opinion. Rather, I repeated the view I long have held that one's "reasonable expectation of privacy" is a particularly relevant factor in determining the validity of a warrantless search. I have recognized, that with respect to automobiles in general, this expectation can be only a limited one. See Arkansas v. Sanders, supra, at 761; Almeida-Sanchez v. United States, 413 U.S. 266, 279 (Powell, J., concurring). I continue to think that in many situations one's

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: MAY 26 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

**UNITED STATES, PETITIONER v.
 ALBERT ROSS, JR.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE POWELL, concurring.

In my opinion in *Robbins v. California*, — U. S. — (1981), concurring in the judgment, I stated that the judgment was justified, though not compelled, by the Court's opinion in *Arkansas v. Sander*, 442 U. S. 756 (1979). I did not agree, however, with the "bright line" rule articulated by the plurality opinion. Rather, I repeated the view I long have held that one's "reasonable expectation of privacy" is a particularly relevant factor in determining the validity of a warrantless search. I have recognized, that with respect to automobiles in general, this expectation can be only a limited one. See *Arkansas v. Sanders, supra*, at 761; *Almeida-Sanchez v. United States*, 413 U. S. 266, 279 (POWELL, J., concurring). I continue to think that in many situations one's reasonable expectation of privacy may be a decisive factor in a search case.

It became evident last Term, however, from the five opinions written in *Robbins*—in none of which THE CHIEF JUSTICE joined—that it is essential to have a Court opinion in *automobile* search cases that provides "specific guidance to police and courts in this reoccurring situation". *Robbins v. California*, — U. S. — (1981) (POWELL, J., concurring). The Court's opinion today, written by JUSTICE STEVENS and now joined by four other Justices, will afford this needed

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 30, 1981

Re: No. 80-2209 United States v. Ross

Dear John:

The order you propose in your memo of September 29th is agreeable to me.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 7, 1982

Re: No. 81-2209 United States v. Ross

Dear John,

Subject to the making of the minor changes we have discussed, I join your opinion.

Sincerely,



Justice Stevens

cc: The Conference

82 MAY -7 14:31

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 29, 1981

MEMORANDUM TO THE CONFERENCE

Re: 80-2209 - United States v. Ross

In order to implement Byron's suggestion, I propose the following form of order:

"Certiorari granted. The parties are directed to address the question whether the Court should reconsider Robbins v. California, ___ U.S. ___."

Respectfully,

JPL

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: MAY 5 '81

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.* ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

In *Carroll v. United States*, 267 U. S. 132, the Court held that a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment. The Court in *Carroll* did not explicitly address the scope of the search that is permissible. In this case, we consider the extent to which police officers—who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it—may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant “particularly describing the place to be searched.”¹

I

In the evening of November 27, 1978, an informant who had previously proved to be reliable telephoned Detective

¹“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U. S. Const., Amdt. 4.

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

STYLISTIC CHANGES THROUGHOUT

SEE PAGES:

10, 11, 21, 22, 25, 26, 27 for substantive changes

From: **Justice Stevens**

Circulated: _____

Recirculated: 8 8 1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.* ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

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



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 10, 1982

Re: 80-2209 - United States v. Ross

Dear Lewis:

Many thanks for your note. I hope it will be possible for you to join at least portions of the opinion. You are certainly correct in stating that I reject some of the reasoning in Sanders, but I did not intend to reject the relevance of a reasonable expectation of privacy. Indeed, perhaps without being as clear as I should have, I intended to direct pages 24 and 25 at that concept and to note that an individual's expectation of privacy in a vehicle and its contents varies dramatically in different settings. If specific language changes in that section might either satisfy your concerns or narrow any possible disagreement between us, I surely would do my best to accommodate you in the interest of making our disposition as unanimous as possible. (The changes between the first and second draft were at Bill Rehnquist's suggestion.)

Sincerely,

Justice Powell

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

Write out the
draft for [unclear]
8-10
(Footnote remembered)

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.* ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

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In this case, we consider the extent to which police officers—who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it—may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant “particularly describing the place to be searched.”¹

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 24 1982

79. 21, 23, 25-26

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.*
ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

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To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 26 '82

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.*
 ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

MAY 28 '82

7-5, 11-12

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.*
ALBERT ROSS, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases held for United States v. Ross,
No. 80-2209

1) Texas v. Brown, No. 81-419

In this case the State of Texas seeks review of a decision of the Texas Court of Criminal Appeals. That court ruled that the trial court erred in denying respondent's motion to suppress evidence.

Respondent's automobile was stopped as part of a "routine and nonrandom license check." When asked to produce his driver's license, respondent put his hand into the right front pocket of his trousers. After fumbling inside the pocket, respondent withdrew a dollar bill that was partially folded and "a small green balloon stuck between his fingers." Still seeking his driver's license, respondent looked into the glove compartment of his car. As he did so the investigating officer saw some empty plastic vials, a white powdery substance that was later determined not to be a controlled substance, and a bag of party balloons. At some point, respondent dropped the green balloon onto the seat of the car. The officer ordered respondent to get out of the car; he then reached into the car and seized the green balloon. The balloon contained heroin. No warrant had been obtained.

The trial court denied a motion to suppress. On appeal, the State argued that the warrantless search was justified under the "plain view" doctrine. A three-judge panel of the Texas Court of Criminal Appeals disagreed. It stated that it did not question either the validity of the officer's initial stop of respondent's vehicle or "the propriety of the arrest since [respondent] failed to produce

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

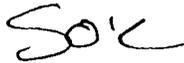
September 30, 1981

MEMO TO: Justice John Paul Stevens
FROM: Justice Sandra D. O'Connor
RE: 80-2209 - United States v. Ross

I agree with the proposed form of order. Perhaps it would help to add the following language at the end:

"in addition to any other questions raised in the petition."

Respectfully,



SO'C

cc: The Chief Justice
Justice Brennan
Justice Stewart
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

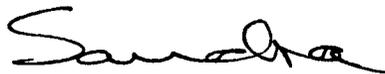
May 11, 1982

No. 80-2209 United States v. Ross

Dear John,

Please join me in your opinion.

Sincerely,



Justice Stevens

Copies to the Conference

MS 100 15 1982