

The Burger Court Opinion Writing Database

McElroy v. United States

455 U.S. 642 (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

February 22, 1982

Re: No. 80-6680 - McElroy v. U.S.

Dear Sandra:

I join.

Regards,

WRB

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 17, 1982

RE: No. 80-6680 McElroy v. United States

Dear Sandra:

I agree.

Sincerely,

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

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 16, 1982

Re: 80-6680 - McElroy v. U. S.

Dear Sandra,

I join your proposed opinion for the
Court.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1982

Re: No. 80-6680 - McElroy v. United States

Dear Sandra:

Please join me.

Sincerely,


T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 17, 1982

Re: No. 80-6680 - McElroy v. United States

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1982

80-6680 McElroy v. United States

Dear Sandra:

Please join me.

Sincerely,

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

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 17, 1982

Re: No. 80-6680 McElroy v. United States

Dear Sandra:

Please join me in your opinion for the Court.

Sincerely,
WMO

Justice O'Connor

Copies to the Conference

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

✓

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 26, 1982

Re: 80-6680 - McElroy v. United States

Dear Sandra:

My dissent should be around in a few days.
I intended to write you earlier.

Respectfully,



Justice O'Connor

Copies to the Conference

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

From: Justice Stevens

Circulated: M6.5 132

1st DRAFT

Re-circulated: _____

SUPREME COURT OF THE UNITED STATES

No. 80-6680

**CHARLES RONALD McELROY, PETITIONER v.
 UNITED STATES**

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

[March —, 1982]

JUSTICE STEVENS, dissenting.

The words "transportation in interstate or foreign commerce" appear in a host of federal criminal statutes.¹ These statutes prohibit the interstate transportation of stolen motor vehicles, forged checks, prostitutes, explosives, obscene materials, kidnap victims, counterfeit phonographs, and numerous other items. In all of these statutes the predicate for federal jurisdiction might reasonably be identified in either of two ways: first, as I read the statutory language, it might require that the subject be transported across a state line; second, as the Court reads this language, it may merely require that the subject be transported during an interstate journey.

In this case the evidence indicates that petitioner transported stolen checks from Ohio into Pennsylvania. We must

¹See, *e. g.*, 18 U. S. C. § 844(d) (explosives); 18 U. S. C. § 924(b) (1976 ed., Supp. III) (firearms); 18 U. S. C. § 1201(a)(1) (1976 ed., Supp. III) (kidnapping); 18 U. S. C. § 1231 (strikebreaking); 18 U. S. C. § 1301 (lotteries); 18 U. S. C. § 1465 (obscenity); 18 U. S. C. §§ 2251-2252 (1976 ed., Supp. III) (sexual exploitation of children); 18 U. S. C. § 2312 (stolen motor vehicles and aircraft); 18 U. S. C. § 2314 (other stolen property); 18 U. S. C. § 2318 (1976 ed., Supp. III) (counterfeit phonographs); 18 U. S. C. § 2421 (prostitution); 18 U. S. C. §§ 2511(1)(b)(iii), 2512(1) (electronic eavesdropping).

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 2, 3, 5-8, 11, 13, 14, 16, 17

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

From: Justice Stevens

Circulated: _____

2nd DRAFT

Recirculated: MAR 17 '82

SUPREME COURT OF THE UNITED STATES

No. 80-6680

CHARLES RONALD McELROY, PETITIONER *v.*
UNITED STATES

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

[March —, 1982]

JUSTICE STEVENS, dissenting.

The words "transportation in interstate or foreign commerce" appear in a host of federal criminal statutes.¹ These statutes prohibit the interstate transportation of stolen motor vehicles, forged checks, prostitutes, explosives, obscene materials, kidnap victims, counterfeit phonographs, and numerous other items. In all of these statutes the predicate for federal jurisdiction might reasonably be identified in either of two ways: first, as I read the statutory language, it might require that the subject be transported across a state line; second, as the Court reads this language, it may merely require that the subject be transported during an interstate journey.

In this case the evidence indicates that petitioner transported stolen checks from Ohio into Pennsylvania. We must

¹See, *e. g.*, 18 U. S. C. § 844(d) (explosives); 18 U. S. C. § 924(b) (1976 ed., Supp. III) (firearms); 18 U. S. C. § 1201(a)(1) (1976 ed., Supp. III) (kidnapping); 18 U. S. C. § 1231 (strikebreaking); 18 U. S. C. § 1301 (lotteries); 18 U. S. C. § 1465 (obscenity); 18 U. S. C. §§ 2251-2252 (1976 ed., Supp. III) (sexual exploitation of children); 18 U. S. C. § 2312 (stolen motor vehicles and aircraft); 18 U. S. C. § 2314 (other stolen property); 18 U. S. C. § 2318 (1976 ed., Supp. III) (counterfeit phonographs); 18 U. S. C. § 2421 (prostitution); 18 U. S. C. §§ 2511(1)(b)(iii), 2512(1) (electronic eavesdropping).

SDOC
1/3
✓
W.D.

To: The Chief Justice
Justice Brennan
Justice White
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: FEB 13 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6680

**CHARLES RONALD McELROY, PETITIONER v.
UNITED STATES**

Join

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[February —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

The petitioner was convicted of two counts of transporting a forged security in interstate commerce in violation of 18 U. S. C. § 2314. He challenges his conviction on the ground that the statute requires proof, concededly lacking at trial, that the securities had been forged before being taken across state lines. Because of a conflict among the circuits on this issue of statutory construction, we granted certiorari. — U. S. — (1981). For the reasons stated below, we affirm the petitioner's conviction.

I

Petitioner Charles McElroy was indicted by a federal grand jury on three counts. Counts 1 and 3 charged that on two occasions the petitioner transported in interstate commerce falsely made and forged securities from Ohio to Pennsylvania in violation of 18 U. S. C. § 2314 of the National Stolen Property Act.¹ Count 2 charged McElroy with

¹ 18 U. S. C. § 2314 provides in pertinent part:
"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited;

pp. 4-17

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: **MAR 12 1982**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6680

CHARLES RONALD McELROY, PETITIONER *v.*
 UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
 STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[March —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

The petitioner was convicted of two counts of transporting a forged security in interstate commerce in violation of 18 U. S. C. § 2314. He challenges his conviction on the ground that the statute requires proof, concededly lacking at trial, that the securities had been forged before being taken across state lines. Because of a conflict among the circuits on this issue of statutory construction, we granted certiorari. — U. S. — (1981). For the reasons stated below, we affirm the petitioner's conviction.

I

Petitioner Charles McElroy was indicted by a federal grand jury on three counts. Counts 1 and 3 charged that on two occasions the petitioner transported in interstate commerce falsely made and forged securities from Ohio to Pennsylvania in violation of 18 U. S. C. § 2314 of the National Stolen Property Act.¹ Count 2 charged McElroy with trans-

¹ 18 U. S. C. § 2314 provides in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited;

1
Stylistic Changes Throughout

P.O. 13,16

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: **MAR 19 1982**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-6680

CHARLES RONALD McELROY, PETITIONER *v.*
UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[March —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

The petitioner was convicted of two counts of transporting a forged security in interstate commerce in violation of 18 U. S. C. § 2314. He challenges his conviction on the ground that the statute requires proof, concededly lacking at trial, that the securities had been forged before being taken across state lines. Because of a conflict among the circuits on this issue of statutory construction, we granted certiorari. — U. S. — (1981). For the reasons stated below, we affirm the petitioner's conviction.

I

Petitioner Charles McElroy was indicted by a federal grand jury on three counts. Counts 1 and 3 charged that on two occasions the petitioner transported in interstate commerce falsely made and forged securities from Ohio to Pennsylvania in violation of 18 U. S. C. § 2314 of the National Stolen Property Act.¹ Count 2 charged McElroy with trans-

¹18 U. S. C. § 2314 provides in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited;