

# The Burger Court Opinion Writing Database

## *Texas v. Brown*

460 U.S. 730 (1983)

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

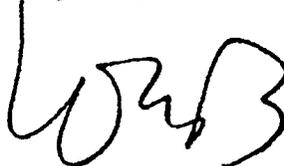
February 21, 1983

Re: 81-419 - Texas v. Brown

Dear Bill:

I join.

Regards,

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

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 6, 1983

Re: No. 81-419 -- Texas v. Brown

Dear John,

Please join me.

Sincerely,

*Bill*

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 24, 1983

Re: 81-419 - Texas v. Brown

Dear Bill,

I join your opinion and shall file a  
line or two.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

From: Justice White

Circulated: FEB 25 1983

Recirculated: \_\_\_\_\_

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF TEXAS

[February —, 1983]

JUSTICE WHITE, concurring.

While joining the Court's opinion, I continue to disagree with the views of four Justices in *Coolidge v. New Hampshire*, 403 U. S. 443, 469 (1971), that plain view seizures are valid only if the viewing is "inadvertent". Nor does the Court purport to endorse that view in its opinion today.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 12, 1983

Re: No. 81-419 - Texas v. Brown

Dear John:

Please join me in your opinion concurring in  
the judgment.

Sincerely,

*T.M.*  
T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 24, 1983

Re: No. 81-419 - Texas v. Brown

Dear Bill:

I have delayed my vote in this case because, like Lewis, I have been troubled about the breadth of your opinion. I share his feeling that the opinion "goes well beyond the application of the exception." Thus, as of now, I am joining Lewis' opinion on the assumption that he will eliminate its third footnote.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 24, 1983

Re: No. 81-419, Texas v. Brown

Dear Lewis:

If, as we discussed by telephone this afternoon, you would eliminate footnote 3 on page 3 of your opinion concurring in the judgment, I would be glad to join your opinion. I suggest this only because I would prefer to meet the situation described in that footnote when it arises.

Sincerely,



Justice Powell

cc: The Conference

March 23, 1983

81-419 Texas v. Brown

Dear Bill:

As we usually agree in the criminal law area, I write to say why I have concluded that we are too far apart in this case to get together. My view of the relative importance of the warrant clause has differed from yours and the Chief's, and apparently now from Byron's and Sandra's. In view of what I have written about it in the past, I cannot join your opinion.

Also, I am troubled by the "cold water" that you toss on Potter's opinion in Coolidge. If we had come on the Court earlier, I am by no means sure I would have joined Potter the way he wrote it. But at least the substance of the plain view exception seems established, and I have not been aware that it has created any genuine problem. The rule clearly fits this case, and I would have thought that no purpose is served by not making a straightforward application of it here.

Sincerely,

Justice Rehnquist

lfp/ss

MAR 22 1983

Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: Justice Powell

Circulated: MAR 23 1983

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWNON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF TEXAS

[March —, 1983]

JUSTICE POWELL, concurring in the judgment.

I concur in the judgment, and also agree with much of the Court's opinion relating to the application in this case of the plain view exception to the Warrant Clause. But I do not join the Court's opinion because it goes well beyond the application of the exception. As I read the opinion, it appears to accord less significance to the Warrant Clause of the Fourth Amendment than is justified by the language and purpose of that Amendment. In dissent in *United States v. Rabinowitz*, 339 U. S. 56 (1950), Justice Frankfurter wrote eloquently:

"One cannot wrench 'unreasonable searches' from the text and context and historic content of the Fourth Amendment. . . . When [that] Amendment outlawed 'unreasonable searches' and then went on to define the very restricted authority that even a search warrant issued by a magistrate could give, the framers said with all the clarity of the gloss of history that a search is 'unreasonable' unless a warrant authorizes it, barring only exceptions justified by absolute necessity." *Id.*, at 70.

To be sure, the opinions of this Court in Warrant Clause cases have not always been consistent. They have reflected disagreement among Justices as to the extent to which the Clause defines the reasonableness standard of the Amend-

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

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: MAR 25 1983

pp. 1, 3

MAR 25 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF TEXAS

[March —, 1983]

JUSTICE POWELL, with whom JUSTICE BLACKMUN joins,  
concurring in the judgment.

I concur in the judgment, and also agree with much of the Court's opinion relating to the application in this case of the plain view exception to the Warrant Clause. But I do not join the Court's opinion because it goes well beyond the application of the exception. As I read the opinion, it appears to accord less significance to the Warrant Clause of the Fourth Amendment than is justified by the language and purpose of that Amendment. In dissent in *United States v. Rabinowitz*, 339 U. S. 56 (1950), Justice Frankfurter wrote eloquently:

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To be sure, the opinions of this Court in Warrant Clause cases have not always been consistent. They have reflected disagreement among Justices as to the extent to which the

April 8, 1983

81-419 Texas v. Brown

Dear John:

I note in your opinion that you address the "search" of the balloon, in addition to its seizure.

My impression is that the search question is not before us, as was conceded at oral argument.

I called this morning to raise this point. I understand you are out of the city, but suspect that you are not in Chicago for the vote on Tuesday. What an unsavory situation!

Sincerely,

Justice Stevens

lfp/ss

P. 1, 2.

Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

APR 13 1983

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: APR 13 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER v. CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[April —, 1983]

JUSTICE POWELL, with whom JUSTICE BLACKMUN joins, concurring in the judgment.

I concur in the judgment, and also agree with much of the plurality's opinion relating to the application in this case of the plain view exception to the Warrant Clause. But I do not join the plurality's opinion because it goes well beyond the application of the exception. As I read the opinion, it appears

to accord less significance to the Warrant Clause of the Fourth Amendment than is justified by the language and purpose of that Amendment. In dissent in *United States v. Rabinowitz*, 339 U. S. 56 (1950), Justice Frankfurter wrote eloquently:

"One cannot wrench 'unreasonable searches' from the text and context and historic content of the Fourth Amendment. . . . When [that] Amendment outlawed 'unreasonable searches' and then went on to define the very restricted authority that even a search warrant issued by a magistrate could give, the framers said with all the clarity of the gloss of history that a search is 'unreasonable' unless a warrant authorizes it, barring only exceptions justified by absolute necessity." *Id.*, at 70.

To be sure, the opinions of this Court in Warrant Clause cases have not always been consistent. They have reflected

Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Stevens  
 Justice O'Connor

From: **Justice Rehnquist**

Circulated: FEB 9 1983

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[February —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Clifford James Brown was convicted in the District Court of Tarrant County, Texas, for possession of heroin in violation of state law. The Texas Court of Criminal Appeals reversed his conviction, holding that evidence introduced at his trial should have been suppressed because it was obtained in violation of the Fourth Amendment to the United States Constitution.<sup>1</sup> That court rejected the state's con-

<sup>1</sup> Brown argues that the decision below rested on an independent and adequate state ground, and therefore that this Court lacks jurisdiction. *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). The position is untenable. The opinion of the Texas Court of Criminal Appeals rests squarely on the interpretation of the Fourth Amendment to the United States Constitution in *Coolidge v. New Hampshire*, 403 U. S. 443 (1971), and on Texas cases interpreting that decision, *e. g.*, *Howard v. State*, 599 S.W. 2d 597 (Tex.Cr.App. 1979); *DeLao v. State*, 550 S.W. 2d 289 (Tex.Cr.App. 1977); *Duncan v. State*, 549 S.W. 2d 730 (Tex.Cr.App. 1977); and *Nicholas v. State*, 502 S.W. 2d 169 (Tex.Cr.App. 1973). The only mention of the Texas Constitution occurs in a summary of Brown's contentions at the outset of the lower court's opinion. In a field like the Fourth Amendment, where the federal courts have been so active in imposing standards on state and local activities, a more affirmative indication in the opinion of the state court of reliance on state law is necessary before we will reject the likely explanation that "the [state] court felt compelled by what it understood to be federal constitutional considerations" to reach the result it did. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977).

Brown relies principally on *Howard v. State*, *supra*, and *Duncan v.*

710

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

From: **Justice Rehnquist**

Circulated: \_\_\_\_\_

Recirculated: FEB 24 1983

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[February —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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<sup>1</sup> Brown argues that the decision below rested on an independent and adequate state ground, and therefore that this Court lacks jurisdiction. *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). The position is untenable. The opinion of the Texas Court of Criminal Appeals rests squarely on the interpretation of the Fourth Amendment to the United States Constitution in *Coolidge v. New Hampshire*, 403 U. S. 443 (1971), and on Texas cases interpreting that decision, *e. g.*, *Howard v. State*, 599 S. W. 2d 597 (Tex. Cr. App. 1979); *DeLao v. State*, 550 S. W. 2d 289 (Tex. Cr. App. 1977); *Duncan v. State*, 549 S. W. 2d 730 (Tex. Cr. App. 1977); and *Nicholas v. State*, 502 S. W. 2d 169 (Tex. Cr. App. 1973). The only mention of the Texas Constitution occurs in a summary of Brown's contentions at the outset of the lower court's opinion. In a field like the Fourth Amendment, where the federal courts have been so active in imposing standards on state and local activities, a more affirmative indication in the opinion of the state court of reliance on state law is necessary before we will reject the likely explanation that "the [state] court felt compelled by what it understood to be federal constitutional considerations" to reach the result it did. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977).

Brown relies principally on *Howard v. State*, *supra*, and *Duncan v.*

AP. 4 + 10

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

From: **Justice Rehnquist**

Circulated: \_\_\_\_\_

Recirculated: MAR 9 1983

Rp 3,7-10,12

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[March —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Clifford James Brown was convicted in the District Court of Tarrant County, Texas, for possession of heroin in violation of state law. The Texas Court of Criminal Appeals reversed his conviction, holding that evidence introduced at his trial should have been suppressed because it was obtained in violation of the Fourth Amendment to the United States Constitution.<sup>1</sup> That court rejected the state's con-

wait  
 J. R.  
 W.

<sup>1</sup> Brown argues that the decision below rested on an independent and adequate state ground, and therefore that this Court lacks jurisdiction. *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). The position is untenable. The opinion of the Texas Court of Criminal Appeals rests squarely on the interpretation of the Fourth Amendment to the United States Constitution in *Coolidge v. New Hampshire*, 403 U. S. 443 (1971), and on Texas cases interpreting that decision, e. g., *Howard v. State*, 599 S. W. 2d 597 (Tex. Cr. App. 1979); *DeLao v. State*, 550 S. W. 2d 289 (Tex. Cr. App. 1977); *Duncan v. State*, 549 S. W. 2d 730 (Tex. Cr. App. 1977); and *Nicholas v. State*, 502 S. W. 2d 169 (Tex. Cr. App. 1973). The only mention of the Texas Constitution occurs in a summary of Brown's contentions at the outset of the lower court's opinion. In a field like the Fourth Amendment, where the federal courts have been so active in imposing standards on state and local activities, a more affirmative indication in the opinion of the state court of reliance on state law is necessary before we will reject the likely explanation that "the [state] court felt compelled by what it understood to be federal constitutional considerations" to reach the result it did. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 568 (1977).

Brown relies principally on *Howard v. State*, *supra*, and *Duncan v.*

P.1

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

From: **Justice Rehnquist**

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Recirculated: APR 6 1983

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[April —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Clifford James Brown was convicted in the District Court of Tarrant County, Texas, for possession of heroin in violation of state law. The Texas Court of Criminal Appeals reversed his conviction, holding that evidence introduced at his trial should have been suppressed because it was obtained in violation of the Fourth Amendment to the United States Constitution.<sup>1</sup> That court rejected the state's con-

<sup>1</sup> Brown argues that the decision below rested on an independent and adequate state ground, and therefore that this Court lacks jurisdiction. *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). The position is untenable. The opinion of the Texas Court of Criminal Appeals rests squarely on the interpretation of the Fourth Amendment to the United States Constitution in *Coolidge v. New Hampshire*, 403 U. S. 443 (1971), and on Texas cases interpreting that decision, *e. g.*, *Howard v. State*, 599 S. W. 2d 597 (Tex. Cr. App. 1979); *DeLao v. State*, 550 S. W. 2d 289 (Tex. Cr. App. 1977); *Duncan v. State*, 549 S. W. 2d 730 (Tex. Cr. App. 1977); and *Nicholas v. State*, 502 S. W. 2d 169 (Tex. Cr. App. 1973). The only mention of the Texas Constitution occurs in a summary of Brown's contentions at the outset of the lower court's opinion.

*Wm Rehnquist*

Brown relies principally on *Howard v. State*, *supra*, and *Duncan v. State*, *supra*. Neither decision supports the proposition that the Texas Court of Criminal Appeals based its decision upon state law. In *Howard*, the State argued that the plain view doctrine justified the seizure of a closed translucent medicine jar from an automobile. The Court of Criminal Appeals rejected the claim, relying on *Coolidge v. New Hampshire*, *supra*, and stating that the State's arguments "cannot be squared with the Supreme Court's interpretation of the plain view doctrine." 599 S. W. 2d, at 602. The court also relied on *Thomas v. State*, *supra*, which it charac-

Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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Rf 1, 6, 13

5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF TEXAS

[April —, 1983]

JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion in which THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE O'CONNOR joined.

Respondent Clifford James Brown was convicted in the District Court of Tarrant County, Texas, for possession of heroin in violation of state law. The Texas Court of Criminal Appeals reversed his conviction, holding that certain evidence should have been suppressed because it was obtained in violation of the Fourth Amendment to the United States Constitution.<sup>1</sup> That court rejected the state's contention

<sup>1</sup> Brown argues that the decision below rested on an independent and adequate state ground, and therefore that this Court lacks jurisdiction. *Fox Film Corp. v. Muller*, 296 U. S. 207, 210 (1935). The position is untenable. The opinion of the Texas Court of Criminal Appeals rests squarely on the interpretation of the Fourth Amendment to the United States Constitution in *Coolidge v. New Hampshire*, 403 U. S. 443 (1971), and on Texas cases interpreting that decision, *e. g.*, *Howard v. State*, 599 S. W. 2d 597 (Tex. Cr. App. 1979); *DeLao v. State*, 550 S. W. 2d 289 (Tex. Cr. App. 1977); *Duncan v. State*, 549 S. W. 2d 730 (Tex. Cr. App. 1977); and *Nicholas v. State*, 502 S. W. 2d 169 (Tex. Cr. App. 1973). The only mention of the Texas Constitution occurs in a summary of Brown's contentions at the outset of the lower court's opinion.

Brown relies principally on *Howard v. State*, *supra*, and *Duncan v. State*, *supra*. Neither decision supports the proposition that the Texas Court of Criminal Appeals based its decision upon state law. In *Howard*, the State argued that the plain view doctrine justified the seizure of a

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

From: **Justice Stevens**

Circulated: APR 5 '83

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[April —, 1983]

JUSTICE STEVENS, concurring in part and dissenting in part.

The Texas Court of Criminal Appeals held that the warrantless seizure of respondent's balloon could not be justified under the plain view doctrine because incriminating evidence was not immediately apparent. This Court reverses, holding that even though the contents of the balloon were not visible to the officer, incriminating evidence was immediately apparent because he had probable cause to believe the balloon contained an illicit substance. I agree with the Court that contraband need not be visible in order for a plain view seizure to be justified. I therefore concur in the conclusion that the Texas Court interpreted the Fourth Amendment more strictly than is required.<sup>1</sup>

<sup>1</sup> Although I think the point is not wholly free of doubt, I agree that the decision of the Texas Court of Criminal Appeals rested on a federal ground in this case. See *ante*, at 1-2, n. 1. I must take exception, however, to the plurality's proposed abandonment of the traditional presumption that Supreme Court jurisdiction will not lie when state law could make our analysis advisory. The plurality advocates a contrary presumption in Fourth Amendment cases because it believes the Court has been "so active in imposing standards on state and local activities." *Ibid.* The statement is commendable for its candor, but I find it disturbing that four Members of this Court would suggest that our jurisdiction depends upon whether we think our predecessors' understanding of the Constitution was too "active."

Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: APR 7 '83

Rp. 1, 3

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-419

TEXAS, PETITIONER v. CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
APPEALS OF TEXAS

[April —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins, concurring in part and dissenting in part.

The Texas Court of Criminal Appeals held that the warrantless seizure of respondent's balloon could not be justified under the plain view doctrine because incriminating evidence was not immediately apparent. This Court reverses, holding that even though the contents of the balloon were not visible to the officer, incriminating evidence was immediately apparent because he had probable cause to believe the balloon contained an illicit substance. I agree with the Court that contraband need not be visible in order for a plain view seizure to be justified. I therefore concur in the conclusion that the Texas Court interpreted the Fourth Amendment more strictly than is required.

*omission*

The Court's explanation of its disposition of this case is, however, incomplete. Neither of the opinions supporting the judgment gives adequate consideration to our cases holding that a closed container may not be opened without a warrant, even when the container is in plain view and the officer has probable cause to believe contraband is concealed within. *United States v. Chadwick*, 433 U. S. 1 (1977); *Arkansas v. Sanders*, 442 U. S. 753 (1979); *United States v. Ross*, — U. S. —, — (1982). Final determination of whether the trial court properly denied the suppression motion requires a more complete understanding of the plain view doctrine, as

*omission*

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 11, 1983

Re: 81-419 - Texas v. Brown

Dear Lewis:

Thanks for your note. I recognize that the search point was not argued and may not have been preserved. That, of course, is the reason for my footnote 1 (which I am expanding) on page 3.

I saw both Chris Whitman and Dallin Oaks at a moot court in Ann Arbor, and both made a special point of asking me to send their best regards to you.

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: \_\_\_\_\_

APR 12 '83

Recirculated: \_\_\_\_\_

72-1-3, 5-6

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[April —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
 concurring in the judgment.

The Texas Court of Criminal Appeals held that the warrantless seizure of respondent's balloon could not be justified under the plain view doctrine because incriminating evidence was not immediately apparent. This Court reverses, holding that even though the contents of the balloon were not visible to the officer, incriminating evidence was immediately apparent because he had probable cause to believe the balloon contained an illicit substance. I agree with the Court that contraband need not be visible in order for a plain view seizure to be justified. I therefore concur in the conclusion that the Texas Court interpreted the Fourth Amendment more strictly than is required.

The plurality's explanation of our disposition of this case is, however, incomplete. It gives adequate consideration to our cases holding that a closed container may not be opened without a warrant, even when the container is in plain view and the officer has probable cause to believe contraband is concealed within. *United States v. Chadwick*, 433 U. S. 1 (1977); *Arkansas v. Sanders*, 442 U. S. 753 (1979); *United States v. Ross*, — U. S. —, — (1982). Final determination of whether the trial court properly denied the suppression motion requires a more complete understanding of the plain view doctrine, as well as the answer to a factual in-

Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice O'Connor

From: **Justice Stevens**

2. 1

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Recirculated: APR 13 '83

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-419

TEXAS, PETITIONER *v.* CLIFFORD JAMES BROWN

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL  
 APPEALS OF TEXAS

[April —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and  
 JUSTICE MARSHALL join, concurring in the judgment.

The Texas Court of Criminal Appeals held that the warrantless seizure of respondent's balloon could not be justified under the plain view doctrine because incriminating evidence was not immediately apparent. This Court reverses, holding that even though the contents of the balloon were not visible to the officer, incriminating evidence was immediately apparent because he had probable cause to believe the balloon contained an illicit substance. I agree with the Court that contraband need not be visible in order for a plain view seizure to be justified. I therefore concur in the conclusion that the Texas Court interpreted the Fourth Amendment more strictly than is required.

The plurality's explanation of our disposition of this case is, however, incomplete. It gives inadequate consideration to our cases holding that a closed container may not be opened without a warrant, even when the container is in plain view and the officer has probable cause to believe contraband is concealed within. *United States v. Chadwick*, 433 U. S. 1 (1977); *Arkansas v. Sanders*, 442 U. S. 753 (1979); *United States v. Ross*, — U. S. —, — (1982). Final determination of whether the trial court properly denied the suppression motion requires a more complete understanding of the plain view doctrine, as well as the answer to a factual in-

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 24, 1983

No. 81-419 Texas v. Brown

Dear Bill,

Please join me in your opinion. I may write a short separate concurrence explaining my understanding of the warrant requirement and the exceptions to it.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

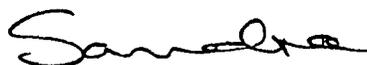
March 9, 1983

No. 81-419 Texas v. Brown

Dear Bill,

I have reviewed your third draft in this case and I will not plan to circulate a separate concurrence. Please join me in the third draft.

Sincerely,



Justice Rehnquist

Copies to the Conference