

# The Burger Court Opinion Writing Database

## *Illinois v. Gates*

462 U.S. 213 (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

October 16, 1982

Re: 81-430 - Illinois v. Gates

Dear John:

Your memo after Conference is entirely correct. I thought the Court was quite wrong in deciding Mapp v. Ohio on a ground never argued, especially on an important issue.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive style.

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

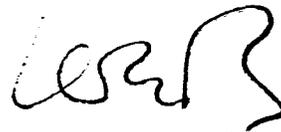
October 19, 1982

RE: No. 81-430, Illinois v. Gates, et ux.

Dear Byron:

I "second" your motion to reargue this case and so vote. I would now grant the state's motion to enlarge the issue. This will involve only one hour of additional time since we have done most of the "homework."

Regards,



Justice White

Copies to the Conference

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210-10

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

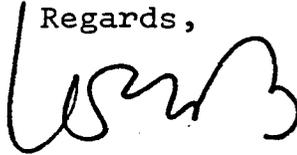
November 2, 1982

Re: No. 81-430 Illinois v. Gates

Dear Byron:

I join your statement on the re-argument of  
this case.

Regards,



Justice White

CC: The Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

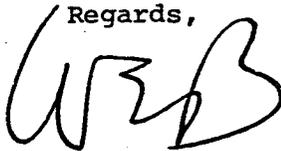
November 5, 1982

Re: 81-430 - Illinois v. Gates

Dear Byron:

I agree with your statement of November 5 for reargument.

Regards,



Justice White

Copies to the Conference

Wait for  
JPS

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 25, 1983

Re: No. 81-430, Illinois v. Gates

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

11  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 7, 1983

RE: No. 81-430 Illinois v. Gates

Dear Thurgood and John:

We three are in dissent in the above. Thurgood and I would affirm outright and you, John, as I understand your vote, would affirm as to the house but reverse as to the car. I'll try my hand at a dissent.

Sincerely,

*Bul*

Justice Marshall

Justice Stevens

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 21, 1983

Re: No. 81-430

Illinois v. Gates

Dear John,

Please join me in your dissent.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 21, 1983

Re: No. 81-430

Illinois v. Gates

Dear Bill,

Although I shall be joining John's dissent, I will also circulate a separate opinion of my own. I hope to have it shortly.

Sincerely,



Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice Brennan**

Circulated: 5/11/83

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[May —, 1983]

JUSTICE BRENNAN, dissenting.

Although I join JUSTICE STEVENS' dissenting opinion and agree with him that the warrant is invalid even under the Court's newly announced "totality of the circumstances" test, see *post*, at 4-5, and n. 8, I write separately to dissent from the Court's unjustified and ill-advised rejection of the two-prong test for evaluating the validity of a warrant based on hearsay announced in *Aguilar v. Texas*, 378 U. S. 108 (1964), and refined in *Spinelli v. United States*, 393 U. S. 410 (1969).

### I

The Court's current Fourth Amendment jurisprudence, as reflected by today's unfortunate decision, patently disregards Justice Jackson's admonition in *Brinegar v. United States*, 338 U. S. 160 (1949):

"[Fourth Amendment rights] . . . are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. . . .

"But the right to be secure against searches and sei-

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

From: **Justice Brennan**

Circulated: 2/2/83

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[June —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

Although I join JUSTICE STEVENS' dissenting opinion and agree with him that the warrant is invalid even under the Court's newly announced "totality of the circumstances" test, see *post*, at 4-5, and n. 8, I write separately to dissent from the Court's unjustified and ill-advised rejection of the two-prong test for evaluating the validity of a warrant based on hearsay announced in *Aguilar v. Texas*, 378 U. S. 108 (1964), and refined in *Spinelli v. United States*, 393 U. S. 410 (1969).

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*W*

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

October 18, 1982

Re: 81-430 - Illinois v. Gates

Dear Chief,

In light of John's memorandum, which I do appreciate, I should not have cast a vote on a ground that we had foreclosed. I would not, however, be averse to rearguing this case with the possible modification of the exclusionary rule in mind. Please take this as a motion to do so.

Sincerely yours,

*Byron*

The Chief Justice

Copies to the Conference

cpm

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

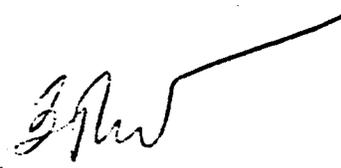
CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 2, 1982

MEMORANDUM TO THE CONFERENCE

I suggest that the following direction accompany the order for reargument in Illinois v. Gates, No. 81-430:

"In addition to the question presented in the petition for certiorari and previously argued here, the parties are requested to address the question whether the constitutional rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, Mapp v. Ohio, 367 U.S. 643 (1961); Weeks v. United States, 232 U.S. 383 (1914), should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief that the search and seizure at issue was consistent with the Fourth Amendment."



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 5, 1982

MEMORANDUM TO THE CONFERENCE

Re: 81-430 - Illinois v. Gates

The suggested order for reargument in this case is  
as follows:

"This case is restored to the calendar for reargument. In addition to the question presented in the petition for certiorari and previously argued here, the parties are requested to address the question whether the rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, Mapp v. Ohio, 367 U.S. 643 (1961); Weeks v. United States, 232 U.S. 383 (1914), should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief that the search and seizure at issue was consistent with the Fourth Amendment."

BRW

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 25, 1983

Re: 81-430 - Illinois v. Gates

---

Dear Bill,

I will write separately in this case.

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: MAY 5 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[May —, 1983]

JUSTICE WHITE, concurring in the judgment.

In my view, the question regarding modification of the exclusionary rule framed in our order of November 29, 1982, — U. S. — (1982), is properly before us and should be addressed. I continue to believe that the exclusionary rule is an inappropriate remedy where law enforcement officials act in the reasonable belief that a search and seizure was consistent with the Fourth Amendment—a position I set forth in *Stone v. Powell*, 428 U. S. 465, 537-539 (1976). In this case, it was fully reasonable for the Bloomingdale, Illinois police to believe that their search of respondents' house and automobile comported with the Fourth Amendment as the search was conducted pursuant to a judicially-issued warrant. The exclusion of probative evidence where the constable has *not* blundered not only sets the criminal free but fails to serve any constitutional interest in securing compliance with the important requirements of the Fourth Amendment. On this basis, I concur in the Court's judgment that the decision of the Illinois Supreme Court must be reversed.

I

The Court declines to address the exclusionary rule question because the Illinois courts were not invited to modify the rule in the first instance. The Court's refusal to face this important question cannot be ascribed to jurisdictional limita-

4, 8, 16, 21  
25-26  
and stylistic changes

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

From: **Justice White**

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

**JUN 9 1983**

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[June —, 1983]

JUSTICE WHITE, concurring in the judgment.

In my view, the question regarding modification of the exclusionary rule framed in our order of November 29, 1982, — U. S. — (1982), is properly before us and should be addressed. I continue to believe that the exclusionary rule is an inappropriate remedy where law enforcement officials act in the reasonable belief that a search and seizure was consistent with the Fourth Amendment—a position I set forth in *Stone v. Powell*, 428 U. S. 465, 537-539 (1976). In this case, it was fully reasonable for the Bloomingdale, Illinois police to believe that their search of respondents' house and automobile comported with the Fourth Amendment as the search was conducted pursuant to a judicially-issued warrant. The exclusion of probative evidence where the constable has *not* blundered not only sets the criminal free but also fails to serve any constitutional interest in securing compliance with the important requirements of the Fourth Amendment. On this basis, I concur in the Court's judgment that the decision of the Illinois Supreme Court must be reversed.

I

The Court declines to address the exclusionary rule question because the Illinois courts were not invited to modify the rule in the first instance. The Court's refusal to face this important question cannot be ascribed to jurisdictional limita-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 12, 1982

Re: No. 81-430 - ILLINOIS v. GATES

Dear John:

Please join me in your dissent circulated today.

Sincerely,

  
T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 11, 1983

Re: No. 81-430-Illinois v. Gates

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

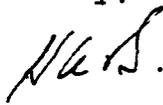
October 19, 1982

Dear Chief:

Re: No. 81-430 - Illinois v. Gates

My comments at conference on this case indicate that my position is in sympathy with much of what Bill Rehnquist says in his letter of October 19 to you. In fact, I could almost go for a one-line reversal, citing Draper. I indicated, however, that if a majority wished to explore a good faith exception, I would go along.

Sincerely,



The Chief Justice

cc: The Conference

43:34 OCT 19 1982

JUSTICE HARRY A. BLACKMUN  
SUBBENS  
RECEIVED

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 3, 1982

Re: No 81-430 - Illinois v. Gates

Dear Byron:

I agree with your proposed inquiry on reargument.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1983

Re: No. 81-430 - Illinois v. Gates

Dear Bill:

I wonder if you would consider the following in connection with your careful and detailed opinion for this case:

1. On page 6, the first full paragraph, next to the last sentence, where you refer to "an important consideration in fashioning a good faith exception" and, in the last sentence, where you refer to "consideration of the modification of the exclusionary rule," I would much prefer to say, respectively, "an important consideration in determining whether to fashion a good faith exception" and "consideration of whether to modify the exclusionary rule."

2. On page 20, would you be willing to omit the "See" cite of the Model Code, or, in the alternative, add a cite to W. LaFave, Search and Seizure, §3.2 (e) (1978)? LaFave follows the Model Code but is more specific.

3. On page 22, would you eliminate the third quotation preceding the citation to Byron's dissent in Miranda? I agree about the first two, but I doubt if the third adds anything.

4. On page 30, the last two sentences of the first paragraph of n. 14 assume that Mrs. Gates originally intended to fly back to Chicago but revised her travel plans. I am not sure that there is any basis for the assumption that Sue in fact changed her plans. I would just as soon eliminate those two sentences.

If you can see your way clear to effect these minor changes, I shall be glad to join your opinion.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 2, 1983

Re: No. 81-430 - Illinois v. Gates

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist  
cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 19, 1982

81-430 Illinois v. Gates

Dear Chief:

As I have long favored consideration of a "good faith" modification of the Exclusionary Rule (see my concurring opinion in Brown v. Illinois), I vote to request rearguing this case.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

35 11-10 1101

100  
210

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 2, 1982

81-430 Illinois v. Gates

Dear Byron:

I am in agreement with your proposed statement about rearguing the above case.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 4, 1982

81-430 Illinois v. Gates

Dear John:

Your proposed additional question is acceptable to  
me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 28, 1983

81-430 Illinois v. Gates

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 19, 1982

Re: No. 81-430 Illinois v. Gates

Dear Chief:

I have received Byron's letter containing its motion to reargue this case, made in response to John's earlier communication regarding our denial of a motion by the petitioner to enlarge the questions presented for decision. While I will probably end up voting to grant re-argument, I do have some mixed feelings about the question which I set forth in the following paragraphs.

My Conference notes indicate that there were at least five votes to reverse the judgment of the Supreme Court of Illinois without the necessity of adopting a "good faith exception" to the exclusionary rule in the case of evidence seized pursuant to a search warrant. If this majority would adhere to a position that cases such as Aguilar and Spinelli remain unmodified as the law in this area, and that the Supreme Court of Illinois simply misapplied them, I would certainly agree that the case would not amount to much, and that re-argument on the "good faith exception" requirement would be far preferable than such a result.

But I thought there was also sentiment at Conference -- whether or not sentiment harbored by a majority a resort to my notes does not indicate one way or the other -- that at the very least Draper should be fully reestablished as an alternative basis to Aguilar and Spinelli for validating warrants. I do not think this result is so insubstantial as to be dismissed out of hand in preference for a re-argument on the "good faith exception."

Starting with Nathanson v. United States, 290 U.S. 41 (1933), a three page decision from the good old days holding that a warrant to search a private dwelling may not be issued unless the magistrate "can find probable cause

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

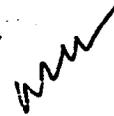
November 2, 1982

Re: No. 81-430 Illinois v. Gates

Dear Byron:

I agree with the proposed direction which you  
circulated today.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

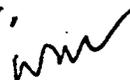
November 4, 1982

Re: No. 81-430 Illinois v. Gates

Dear John:

I doubt the wisdom of adding the question you propose for reargument in this case to the question already formulated by Byron. It seems to me we already have one basis for reversal which seems to command a majority of the Court; retrenching somewhat from Aguilar and Spinelli and re-establishing Draper. The reason, as I understood it, why you suggested the case should be re-argued if a majority wished to reach the question now posed by Byron was that the petitioner itself had requested an enlargement of the questions presented to include that issue, and its request had been denied by the Court. But I see no reason for simply adding a "garden variety" probable cause issue under the decision in Ross; I dare say there would be few, if any, to grant certiorari in the first place if that were all the case involved.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 8, 1982

Re: No. 81-430 Illinois v. Gates

Dear Byron:

I agree with the order proposed in your memorandum of November 5th.

Sincerely,



Justice White

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: APR 11 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[April —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents Lance and Susan Gates were indicted for violation of state drug laws after police officers, executing a search warrant, discovered marijuana and other contraband in their automobile and home. Prior to trial the Gates moved to suppress evidence seized during this search. The Illinois Supreme Court affirmed the decisions of lower state courts granting the motion. It held that the affidavit submitted in support of the State's application for a warrant to search the Gates's property was inadequate under this Court's decisions in *Aguilar v. Texas*, 378 U. S. 108 (1964) and *Spinelli v. United States*, 393 U. S. 410 (1969).

We granted certiorari to consider the application of the Fourth Amendment to a magistrate's issuance of a search warrant on the basis of a partially corroborated anonymous informant's tip. After receiving briefs and hearing oral argument on this question, however, we requested the parties to address an additional question:

"Whether the rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, *Mapp v. Ohio*, 367 U. S. 643 (1961); *Weeks v. United States*, 232 U. S. 383 (1914), should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief

*Present by*  
WJH

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P  
P 5, 7, 10, 14, 25, 28

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

From: Justice Rehnquist

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

Recirculated: APR 22 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[April —, 1983]

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pp. 24-26

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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<sup>3<sup>rd</sup></sup>  
~~2<sup>nd</sup>~~ DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[May —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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"Whether the rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, *Mapp v. Ohio*, 367 U. S. 643 (1961); *Weeks v. United States*, 232 U. S. 383 (1914), should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 31, 1983

Re: No. 81-430 Illinois v. Gates

Dear Harry:

All four of the changes you propose in your letter of May 31st are quite acceptable to me, and I shall make them and recirculate as soon as possible.

Sincerely,



Justice Blackmun

P  
P 6, 11, 12, 14, 20  
30 n 14, 31 n. 14

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

From: **Justice Rehnquist**

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

Recirculated: 6/1/83

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[May —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents Lance and Susan Gates were indicted for violation of state drug laws after police officers, executing a search warrant, discovered marijuana and other contraband in their automobile and home. Prior to trial the Gates' moved to suppress evidence seized during this search. The Illinois Supreme Court affirmed the decisions of lower state courts granting the motion. It held that the affidavit submitted in support of the State's application for a warrant to search the Gates' property was inadequate under this Court's decisions in *Aguilar v. Texas*, 378 U. S. 108 (1964) and *Spinelli v. United States*, 393 U. S. 410 (1969).

We granted certiorari to consider the application of the Fourth Amendment to a magistrate's issuance of a search warrant on the basis of a partially corroborated anonymous informant's tip. After receiving briefs and hearing oral argument on this question, however, we requested the parties to address an additional question:

"Whether the rule requiring the exclusion at a criminal trial of evidence obtained in violation of the Fourth Amendment, *Mapp v. Ohio*, 367 U. S. 643 (1961); *Weeks v. United States*, 232 U. S. 383 (1914), should to any extent be modified, so as, for example, not to require the exclusion of evidence obtained in the reasonable belief

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 15, 1983

MEMORANDUM TO THE CONFERENCE

Cases held for No. 81-430 - Illinois v. Gates

No. 82-1711 - Colorado v. Quintero

Respondent was arrested on suspicion of burglary, and a variety of stolen property was found in his possession; he was convicted of burglary. The facts, as described by the Colorado court, are as follows:

"On September 29, 1981, at 12:45 p.m., Darlene Bergan was sweeping the porch of her home at 691 South Vine Street in Denver. It was a hot day and the temperature was in the 80 degree range or above that. Darlene Bergan's house is located adjacent to the bus stop at the corner of Exposition and Vine. She saw a man walking on the opposite side of the street and watched him go up on the porch of the house and stand at the front door for approximately twenty seconds, and then saw him stand at the front window so that he could peer into the front of the house for approximately the same amount of time. He then left the porch and proceeded north and appeared to be looking at the windows on the side of the house. He then walked in a northerly direction on Vine Street, stopped at another house, and then could not be seen by Mrs. Bergan. He was wearing a short sleeve shirt and appeared to be watching Mrs. Bergan. She next saw him at 1:45 p.m. while he was standing at a bus stop next to her house. He had taken off his shirt and had used the shirt to cover a television set. He paced nervously and was trying to thumb a ride or hitchhike while waiting for the bus to arrive. Mrs. Bergan

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 15, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-430 - Illinois v. Gates

No. 82-963 - Massachusetts v. Sheppard

The question presented in the petition is whether the Fourth Amendment requires suppression of evidence reasonably seized in good faith reliance on a search warrant, later found defective owing to a technical judicial error.

After the beaten, burned body of a young woman was found in a vacant lot on a Saturday morning, Boston police obtained information linking respondent with the crime, and interviewed him. On Sunday, police obtained further information suggesting respondent committed the murder, and decided to obtain a warrant to arrest respondent and to search his dwelling. They composed an affidavit setting out what the lower courts found to be probable cause to search respondent's apartment, and in addition, listed in detail property they intended to seize. Because it was Sunday afternoon, the police were unable to find a clerk of court, or a suitable search warrant form. One of the officers found a warrant form used in a neighboring district, once used for searches for controlled substances, and marked it up for his purposes. He did not, however, change the references to "controlled substances" in the portion of the form that provided authority to search.

The officers took the application and affidavit to the home of a local judge, who also could not find an appropriate search warrant form. He made further changes in the "controlled substances" form before signing it, but did not alter the portion of the warrant granting authority to search for any controlled substance. The warrant made no

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 15, 1982

MEMORANDUM TO THE CONFERENCE

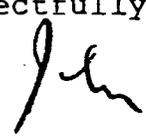
Re: 81-430 - Illinois v. Gates

At our conference discussion I believe we failed to take into account the fact that on February 8, 1982, the petitioner filed a motion for leave to amend or enlarge the question presented for review, which motion was unanimously denied. The question that we refuse to allow the Illinois Attorney General to argue reads as follows:

"Assuming, arguendo, that the information used to obtain the search warrant did not satisfy Aguilar v. Texas, 378 U.S. 108 (1964), should the evidence obtained under the warrant nevertheless be admitted at trial because the police acted in a reasonable good faith belief in the validity of the warrant?"

In view of the denial of that motion, it seems to me that the Court should not address the question which the parties were not permitted to argue. I would imagine the respondent assumed that there was no need to address that question.

Respectfully,



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 19, 1982

Re: No. 81-430 - Illinois v. Gates

Dear Byron:

If a majority of the Court believes that the warrant was properly issued, I must confess to some puzzlement as to the need for a "good faith" exception from the Exclusionary Rule. I should think that the question whether such an exception should be created could best be confronted in a case in which the Court were convinced that there had been a violation of the Fourth Amendment but that there were sound reasons for nevertheless admitting the evidence.

A second matter that I believe the Court should consider before reaching out for the "good faith" issue in this case is that Illinois is one of the states which followed the Exclusionary Rule long before this Court decided it should be imposed upon the states. If we should hold that the Federal Constitution does not require exclusion when the police officers acted in good faith, I should think it would still be necessary for the Court to decide whether or not the Fourth Amendment was violated in order to give the Illinois court the guidance it would need in deciding whether or not the evidence should be suppressed. I do not understand anyone to suggest that this Court would have the power to require a state court to create a good faith exception to its own Exclusionary Rule.

Finally, I would suggest that the frequency with which the "good faith" argument is advanced makes it pretty clear that we will receive an appropriate case in due course and that there really is no need to take this particular case in order to reach the issue-- particularly when this judgment is due for reversal in any event.

Accordingly, my vote is to deny your motion.

Respectfully,



Justice White

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 1, 1982

MEMORANDUM TO THE CONFERENCE

Re: 81-430 - Illinois v. Gates

If the Court does finally conclude that an additional hour of oral argument is necessary in order to dispose of this case, I move that the parties be requested to address the following question (in addition to whatever other questions the Court frames):

"Assuming, arguendo, that the warrant was invalid because it was not supported by probable cause at the time it was issued, was there nevertheless probable cause to search the vehicle after it returned from Florida, so that a warrantless search was justified under the Court's holding in Ross v. United States, \_\_\_ U.S. \_\_\_?"

Respectfully,



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 4, 1982

Re: 81-430 - Illinois v. Gates

Dear Byron:

In connection with the proposed reargument of this case, a problem has occurred to me concerning both the question that I have proposed and the question that you have framed. In both instances, we are inviting the petitioner to seek reversal on a ground not presented to the lower courts. Is this consistent with our prior practice?

For future reference, you may also be interested in having the citation to the Illinois case holding that Illinois follows an exclusionary rule from which there is no good faith exception. In People v. Castree, 311 Ill. 392 (1924), the Illinois Supreme Court held that evidence obtained by an unlawful search and seizure conducted by State officers must be excluded from Illinois trials. At pages 397-398, the court wrote:

"In People v. Brocamp, 307 Ill. 448, the question was presented for the first time in this court of the admissibility in evidence of stolen property which had been obtained by an unlawful search and seizure conducted by virtue of their office by State officers charged with the prosecution of crime. In that case, without a warrant such officers invaded the defendant's premises and without authority of law searched for and seized certain property alleged to have been stolen. It was a case within the exception mentioned in the Gindrat case, subversive of the defendant's constitutional right, and we held that while the court, on objection to the admission of evidence, will not stop the trial of the case and enter upon the trial of a collateral issue as to the source from which the evidence was obtained, where the defendant makes timely application, before the beginning of the trial, for an order directing the return to him of the property or

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 4, 1982

Re: 81-430 - Illinois v. Gates

Dear Bill:

Thanks for your note. I must, however, correct your statement that I suggested the case should be reargued. I definitely did not make that suggestion and am strongly opposed to it. I merely pointed out that the Court had already decided not to allow the Illinois Attorney General to argue the question that some of you have now indicated should be reargued.

I should also note that I agree with your statement that there is a basis for reversal that seems to command a majority of the Court and therefore there is absolutely no need to reargue the case except to provide the Court with an excuse to do some unnecessary lawmaking.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

From: **Justice Stevens**

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*1/85*  
*Please give me*  
*in your dissent circulated*  
*to day*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES, ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[November —, 1982]

JUSTICE STEVENS, dissenting.

Earlier this year the Court decided not to allow the Illinois Attorney General to argue the question it now asks the parties to address. That decision was consistent with the Court's settled practice of not permitting a party to advance a ground for reversal that was not presented below. The reversal today of the Court's earlier decision is not only a flagrant departure from its settled practice, but also raises serious questions concerning the Court's management of its certiorari jurisdiction. I am therefore unable to join the Court's decision to order reargument of this case.

I

As a matter of ordinary procedure, the burdens of litigation are minimized and the decisional process is expedited if a court is consistent in its rulings as a case progresses. We set a poor example for other judges when we suddenly reverse our prior rulings in the same case.

On February 8, 1982, the State of Illinois filed a motion seeking leave to amend or enlarge the question presented for review in this case. The motion asked the Court to incorporate the following question:

"Assuming, *arguendo*, that the information used to obtain the search warrant did not satisfy *Aguilar v. Texas*,

pp. 1, 2, 3

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

From: Justice Stevens

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# SUPREME COURT OF THE UNITED STATES

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES, ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[November —, 1982]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and  
JUSTICE MARSHALL join, dissenting.

Earlier this year the Court decided not to allow the Illinois Attorney General to argue the question it now asks the parties to address. That decision was consistent with the Court's settled practice of not permitting a party to advance a ground for reversal that was not presented below. The reversal today of the Court's earlier decision is not only a flagrant departure from its settled practice, but also raises serious questions concerning the Court's management of its certiorari jurisdiction. I am therefore unable to join the Court's decision to order reargument of this case.

## I

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From: Justice Stevens

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**SUPREME COURT OF THE UNITED STATES**

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[April —, 1983]

JUSTICE STEVENS, dissenting.

The fact that Lance and Sue Gates made a 22-hour non-stop drive from West Palm Beach, Florida, to Bloomingdale, Illinois, only a few hours after Lance had flown to Florida provided persuasive evidence that they were engaged in illicit activity. That fact, however, was not known to the magistrate when he issued the warrant to search their home.

What the magistrate did know at that time was that the anonymous informant had not been completely accurate in his or her predictions. The informant had indicated that "Sue drives their car to Florida *where she leaves it to be loaded up with drugs . . . . Sue flies back after she drops the car off in Florida.*" App. 1a (emphasis added). Yet Detective Mader's affidavit reported that she "left the West Palm Beach area driving the Mercury northbound." App. 12a.

The discrepancy between the informant's predictions and the facts known to Detective Mader is significant for three reasons. First, it cast doubt on the informant's hypothesis that the Gates already had "over \$100,000 worth of drugs in their basement," App. 1a. The informant had predicted an itinerary that always kept one spouse in Bloomingdale, suggesting that the Gates did not want to leave their home unguarded because something valuable was hidden within. That inference obviously could not be drawn when it was known that the pair was actually together over a thousand

*Join*

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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**

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7. 1-3

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[May —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins, dissenting.

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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**

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[May —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
dissenting.

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p. 2

# SUPREME COURT OF THE UNITED STATES

No. 81-430

ILLINOIS, PETITIONER *v.* LANCE GATES ET UX.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF ILLINOIS

[June 8, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
dissenting.

The fact that Lance and Sue Gates made a 22-hour non-stop drive from West Palm Beach, Florida, to Bloomingdale, Illinois, only a few hours after Lance had flown to Florida provided persuasive evidence that they were engaged in illicit activity. That fact, however, was not known to the magistrate when he issued the warrant to search their home.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 19, 1982

No. 81-430 Illinois v. Gates

Dear Chief,

I am one of those who believe Draper v. United States, 358 U.S. 307 (1959), provides an alternative to the Aguilar test for obtaining a search warrant. I agree with Bill Rehnquist that some consideration should be given to that issue even if we also vote to grant reargument in Illinois v. Gates in order to address the good faith exception.

Sincerely,



The Chief Justice

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*Not to Have Reargument - Will probably be argued  
WJB BFW & circulate*

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 28, 1982

No. 81-430 Illinois v. Gates

Dear Chief,

If there are four others who want to have this case reargued, I am willing to agree to do so, however, I still would want to address the Draper alternative.

Sincerely,

*Sandra*

The Chief Justice

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 2, 1982

No. 81-430 Illinois v. Gates

Dear John,

If the Court sets this case for reargument, I am willing to agree to also ask the parties to address the question set forth in your memo of November 1.

Sincerely,



Justice Stevens

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

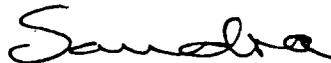
November 2, 1982

Re: No. 81-430 Illinois v. Gates

Dear Byron,

I approve of your proposed order, to be  
accompanied by John's additional suggestion.

Sincerely,



Justice White

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 13, 1983

No. 81-430 Illinois v. Gates

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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