

The Burger Court Opinion Writing Database

Welsh v. Wisconsin

466 U.S. 740 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
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To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: JAN 27 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

EDWARD G. WELSH *v.* WISCONSIN

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

No. 82-5466. Decided January —, 1983

The petition for writ of certiorari is denied.

JUSTICE MARSHALL, dissenting from the denial of certiorari.

The Wisconsin Supreme Court upheld a warrantless, nighttime entry into petitioner's home to arrest him for a suspected violation of the state motor vehicle code. The court concluded that exigent circumstances justified the entry. In my view, this decision is inconsistent with the Fourth Amendment. It is also at odds with decisions from several other jurisdictions. I would grant certiorari to consider what circumstances are sufficiently exigent to justify a warrantless entry to arrest, a question we explicitly left open in *Payton v. New York*, 445 U. S. 573, 583 (1980).

I

On the rainy night of April 27, 1978, a lone witness, Randy Jablonic, saw a car swerve and leave the road, eventually coming to a stop in an open field. Jablonic stopped his truck and asked a passerby to call the police. Prior to the arrival of the police, the driver of the car emerged from it and approached Jablonic's truck. The driver asked Jablonic for a ride home but Jablonic told him that they should wait for assistance in removing or repairing the car rather than leave it in the field. The driver nevertheless left the scene. Jablonic remained behind. A few minutes later, the police arrived. Jablonic told one officer what he had seen and that he thought the driver was either very inebriated or very sick. The officer checked the motor vehicle registration of the

PP. 1, 2, 5

Still deny

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

From: **Justice Marshall**

Circulated: _____

Recirculated: **FEB 1 1983**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

EDWARD G. WELSH *v.* WISCONSIN

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

No. 82-5466. Decided February —, 1983

The petition for writ of certiorari is denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting from the denial of certiorari.

The Wisconsin Supreme Court upheld a warrantless, nighttime entry into petitioner's home to arrest him for a suspected violation of the state motor vehicle code. The court concluded that exigent circumstances justified the entry. In my view, this decision is inconsistent with the Fourth Amendment. It is also at odds with decisions from several other jurisdictions. I would grant certiorari to consider what circumstances are sufficiently exigent to justify a warrantless entry to arrest, a question we explicitly left open in *Payton v. New York*, 445 U. S. 573, 583 (1980).

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Still deny. further gibbling over a silly case. This is proof that some of the court's too-heavy workload is self-generated.

yes

mn

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

From: **Justice O'Connor**

Circulated: JAN 29 1983

Recirculated: _____

Still Deny

~~Case note~~

mc/w

1st DRAFT

2/1/83

SUPREME COURT OF THE UNITED STATES

EDWARD G. WELSH v. WISCONSIN

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

No. 82-5466. Decided January —, 1983

Opinion of JUSTICE O'CONNOR respecting the denial of the petition for a writ of certiorari.

In my view, there are at least two compelling reasons to deny a writ of certiorari in this case, and the dissent from denial neglects both reasons.

First, the facts of the case, as reported in the decision below, show clearly that when the police officer proceeded to petitioner's residence, both petitioner's wife and his stepdaughter consented to the officer's entry into the residence. When the stepdaughter answered the door, she stated to the police officer that petitioner had "just stumbled in" "He is upstairs, and motioned the way—towards the stairs, allowing us to pass." *State v. Welsh*, 108 Wis. 2d 319, 325 (1982). When the officer began to ascend the stairs, he encountered petitioner's wife, who, according to the officer, "gave her consent for us to go up, because she said, 'Yes, he is in bed. He just got into bed. And something has to be done,' . . . and motioned us to the bedroom." *Id.*, at 325-326.

The dissent from denial states that "[t]he state trial court never decided whether there was consent to the entry, because it deemed decision of that issue unnecessary in light of its finding that exigent circumstances were present." *Ante*, at 2, n. 1. Nevertheless, where the facts of the case, as adopted by the Wisconsin Supreme Court, show that resolution of the issue presented for review may prove unnecessary since the judgment below was clearly correct on another ground, it would be inappropriate to grant certiorari. See *The Monrosa v. Carbon Black Export, Inc.*, 359 U. S. 180 (1959).

Second, in the court below, petitioner only questioned

Deny

Don't join either opinion. Clearly a case that is not c/w — particularly since applied exclusionary rule to civil proceedings — something this Court never has done so far as I know.