

The Burger Court Opinion Writing Database

Solem v. Stumes

465 U.S. 638 (1984)

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

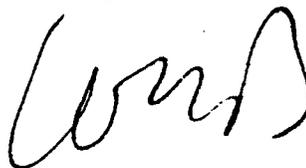
February 13, 1984

Re: No. 81-2149 - Solem, Warden v. Stumes, Norman

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

W

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 13, 1983

No. 81-2149

Solem v. Stumes

Dear Thurgood and John,

We three are in dissent in the
above. John, would you be willing to
try the dissent?

Sincerely,

Bill

Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 31, 1984

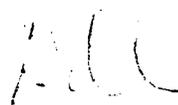
No. 81-2149

Solem v. Stumes

Dear John,

Please join me in your dissent.

Sincerely,



Justice Stevens

Copies to the Conference

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

From: Justice White

Circulated: JAN 5 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[January —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

The question in this case is whether *Edwards v. Arizona*, 451 U. S. 477 (1981), should be applied retroactively.

I

Respondent, Norman Stumes, was a suspect in the death of Joyce Hoff in Sioux Falls, South Dakota. On September 27, 1973, Stumes was arrested in Green Bay, Wisconsin, on pending perjury and felony check charges. He had not yet been charged with Hoff's death. The following morning he spoke by phone with his attorney in Sioux Falls, who told him not to make any statements before returning to South Dakota. Three Sioux Falls police officers, Skadsen, Green, and Hendrick, went to Green Bay to bring Stumes back. They first spoke with him on the morning of November 1. After being read his *Miranda* rights, Stumes said that he understood them and did not object to speaking with police without his attorney present. After an hour and a half of conversation about the homicide, Green asked Stumes if he would be willing to take a lie detector test. Stumes answered that "that is a question I'd rather not answer until I talk to [my attorney]." At that point the officers stopped questioning.

The officers returned that afternoon and recommenced questioning without giving *Miranda* warnings. Stumes admitted he had been in Hoff's apartment the night of the kill-

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

Stylistic changes throughout; -
see pp. 6-7, 9-12

From: Justice White

Circulated: _____

Recirculated: FEB 21 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[February —, 1984]

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

From: Justice White

Circulated: _____

Recirculated: FEB 24 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[February —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

The question in this case is whether *Edwards v. Arizona*,
451 U. S. 477 (1981), should be applied retroactively.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 28, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for 81-2149 - Solem v. Stumes

There are 4 holds for Stumes. The first two are here on habeas, the second two on direct appeal.

1) Fairman v. White, No. 81-2340, Cert to CA7.

As CA7 pointed out, "the facts of this case are almost identical to those of Edwards." On May 24, 1969, resp was arrested for a crime unrelated to that for which he was ultimately convicted. After being read his rights, he stated that he would like to see a lawyer. The next day, he was questioned by two other officers and confessed to two crimes unrelated to this petn. The day after that, he confessed to the murder of which he was ultimately convicted. The confession was admitted at trial.

The later procedural history of this case is tortuous. The Illinois App. Court ordered a new suppression hearing. The TC again held that the confession was admissible, and the App. Court affirmed. The State S.Ct. affirmed, and this Court denied cert. Resp then sought federal habeas relief. The DC denied the writ; the CA remanded for an evidentiary hearing; the DC conducted the hearing and concluded that resp had not adequately invoked his right to counsel. On appeal, the CA held that resp had invoked his right to counsel. However, it rejected a per se rule against reinterrogation and held that petr had waived his right. This Court held the ensuing cert petn for Edwards and GVRed. On remand, apparently assuming that the retroactivity of Edwards was not an open question, CA7 observed that "Edwards completely undermines our holding in White II and behooves us to reverse the district court's judgment," which is exactly what it did. It also held that resp was not barred by Stone v. Powell from raising his 5th Amendment claim on habeas. The State then petitioned for cert, arguing that Edwards did not create a per se rule, that under the circumstances of this case the confession was admissible, and that Stone v. Powell should be extended to bar habeas relief based on technical objections to trustworthy confessions.

Having told the CA to reconsider its decision in light of Edwards, without indicating that the retroactivity of the case remained undecided, we share responsibility for the current

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 31, 1984

Re: No. 81-2149-Solem v. Stumes

Dear John:

Please join me in your dissent.

Sincerely,

JM.
T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 9, 1984

Re: No. 81-2149 - Solem v. Stumes

Dear Byron:

For now, I shall wait to see what Lewis has to say in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 6, 1984

Re: No. 81-2149 - Solem v. Stumes

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1984

81-2149 Solem v. Stumes

Dear Byron:

I will join the judgment and write briefly.

Sincerely,



Justice White

lfp/ss

cc: The Conference

01/27

PP 2, 3 and 4

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

From: Justice Powell

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[January —, 1984]

JUSTICE POWELL, concurring.

In *Edwards v. Arizona*, 451 U. S. 477 (1981), this Court determined that the accused's waiver of his right to counsel during custodial interrogation was involuntary because he was subjected to renewed interrogation without counsel present after having invoked that right. It was uncertain at the time whether the Court merely intended to apply *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938), which had held that waivers of counsel are effective only if they are "an intentional relinquishment or abandonment of a known right or privilege," a determination made by reference to "the particular facts and circumstances surrounding [each] case, including the background, experience, and conduct of the accused." See 451 U. S., at 482. Alternately, *Edwards* may have been interpreted as establishing a new *per se* rule that, once the right to counsel has been invoked, a waiver of that right, however voluntary under the *Zerbst* standard, can never be valid if made in response to further police questioning. See *Edwards, supra*, at 488-490 (JUSTICE POWELL, concurring in the result). Confusion as to the proper interpretation of *Edwards* persisted in subsequent cases. See *e. g.*, *Oregon v. Bradshaw*, 462 U. S. — (1983); *id.*, at — n. 1 (JUSTICE POWELL, concurring in the judgment) (citing lower court cases). The Court now states clearly, relying in part on *Bradshaw*, that *Edwards* established a new *per se*

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02/13

P. 2, 3,

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

From: Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[January —, 1984]

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02/23

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

0, 2

From: Justice Powell

Circulated: _____

Recirculated: FEB 24 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

**HERMAN SOLEM, WARDEN, PETITIONER v.
NORMAN STUMES**

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

[February —, 1984]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT U.S.
JUSTICE REHNQUIST

January 6, 1984

'84 JAN -6 P3:07

Re: No. 81-2149 Solem v. Stumes

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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11

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 13, 1983

Re: 81-2149 - Solem v. Stumes

Dear Bill:

Although my view may differ slightly from yours and Thurgood's, I will be happy to try to write a dissent that we can all join.

Respectfully,



Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1984

Re: 81-2149 - Solem v. Stumes

Dear Byron:

As soon as I can get to it I will circulate a dissent.

Respectfully,



Justice White

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

Circulated: JAN 30 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[January —, 1984]

JUSTICE STEVENS, dissenting.

Respondent Stumes is an acknowledged lawbreaker. His confession, together with other evidence of his guilt, brands him as such. Whether his incarceration for the past dozen or more years is adequate or insufficient punishment for his crime is a matter of no concern to this Court. What is—or should be—of concern is the conduct of other lawbreakers.

While respondent was in custody, and after he had requested the assistance of counsel, the police interrogated him on two separate occasions. As the Court held in *Edwards v. Arizona*, 451 U. S. 477 (1981), such interrogation is unlawful. There is no dispute in this Court that respondent's constitutional rights were violated.¹ Nevertheless, because the unlawful interrogation took place prior to May 18, 1981, the date *Edwards* was decided, the Court holds that respondent's statements are admissible in evidence even though they would have been inadmissible if they had been made after May 18, 1981. In reaching this result, the Court states that the question is whether *Edwards* "shall be applied retroac-

¹This Court limited its grant of certiorari in this case to the question of whether *Edwards* "should be applied retroactively" to this case. *Ante*, at 4. Therefore, the holding of the Court of Appeals that the police conduct in this case violated respondent's rights under the Fifth Amendment is not at issue here, and must be taken as a given.

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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stylistic changes

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SUPREME COURT U.S.
JUSTICE

'84 JAN 33 A10:07

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[February —, 1984]

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

7.8

From: Justice Stevens

Circulated: _____

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SUPREME COURT OF THE UNITED STATES

No. 81-2149

HERMAN SOLEM, WARDEN, PETITIONER *v.*
NORMAN STUMES

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

[February 29, 1984]

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 6, 1984

No. 81-2149 Solem v. Stumes

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference

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