

The Burger Court Opinion Writing Database

Oliver v. United States

466 U.S. 170 (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

December 30, 1983

RE: 82-15) - Oliver v. United States
81-1273) - Maine v. Thornton

Dear Lewis:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'L. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

MA

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 15, 1983

No. 82-15

Oliver v. United States

No. 82-1273

Maine v. Thornton

Dear Thurgood and John,

We three are in dissent in the
above two cases. Thurgood, would you
take on the dissent?

Sincerely,

W. J. Brennan, Jr.

~~11/15/83
W. J. Brennan, Jr.
11/15/83~~

Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

RECEIVED
SUPREME COURT OF U.S.
JUSTICE MARSHALL

'83 DEC -7 A9:58 December 7, 1983

Nos. 82-15 & 82-1273

Oliver v. United States
& Maine v. Thornton

Dear Lewis,

I will await the dissent.

Sincerely,



Justice Powell

Copies to the Conference

2

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 26, 1984

No. 82-15) Oliver v. United
) States
)
No. 82-1273) Maine v. Thornton

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1983

Re: Oliver and Thornton 44-62-15

Dear Lewis,

I join in Parts I and II of your draft opinion in these cases. These Parts dispose of the issue before us, and it seems to me that there is no need to deal with the expectation of privacy matter. However reasonable a landowner's expectations of privacy may be, I doubt that those expectations could convert a field into a "house" or an "effect." Furthermore, if privacy expectations are determinative, where a landowner takes steps to keep intruders off his property sufficient to make entry a criminal trespass and hence to invoke the ultimate sanction of the local law, I would have some difficulty saying that his expectations of privacy are not reasonably founded. I shall write a few words along this line.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 15, 1983

Re: No. 82-15-Oliver v. U.S. and 82-1273-Maine v.
Thornton

Dear Bill:

I will do the dissent in this one.

Sincerely,

JM.
T.M.

Justice Brennan

cc: Justice Stevens

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 7, 1983

Re: Nos. 82-15 and 1273-Oliver v. U.S., et al

Dear Lewis:

"In due course" I will circulate a dissent.

Sincerely,

J.M.
T.M.

Justice Powell

cc: The Conference

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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: **MAK 23 1984**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-15 AND 82-1273

82-15 RAY E. OLIVER, PETITIONER
v.
UNITED STATES

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

82-1273 MAINE, PETITIONER
v.
RICHARD THORNTON

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL
COURT OF MAINE

[March —, 1984]

JUSTICE MARSHALL, dissenting.

In each of these consolidated cases, police officers, ignoring clearly visible "no trespassing" signs, entered upon private land in search of evidence of a crime. At a spot that could not be seen from any vantage point accessible to the public, the police discovered contraband, which was subsequently used to incriminate the owner of the land. In neither case did the police have a warrant authorizing their activities.

The Court holds that police conduct of this sort does not constitute an "unreasonable search" within the meaning of the Fourth Amendment. The Court reaches that startling conclusion by two independent analytical routes. First, the Court argues that, because the Fourth Amendment by its terms renders people secure in their "persons, houses, papers, and effects," it is inapplicable to trespasses upon land not lying within the curtilage of a dwelling. *Ante*, at 4-5. Second, the Court contends that "an individual may not

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STYLISTIC CHANGES THROUGHOUT.

p. 6

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

From: Justice Marshall

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APR 13 1984

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-15 AND 82-1273

82-15 RAY E. OLIVER, PETITIONER
v.
UNITED STATES

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

82-1273 MAINE, PETITIONER
v.
RICHARD THORNTON

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

[April —, 1984]

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

In each of these consolidated cases, police officers, ignoring clearly visible "no trespassing" signs, entered upon private land in search of evidence of a crime. At a spot that could not be seen from any vantage point accessible to the public, the police discovered contraband, which was subsequently used to incriminate the owner of the land. In neither case did the police have a warrant authorizing their activities.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

RECEIVED
SUPREME COURT U.S.
JUSTICE HARRY A. BLACKMUN

December 21, 1983

'83 DEC 21 AM 11:24

Re: No. 82-15 - Oliver v. United States
No. 82-1273 - Maine v. Thornton

Dear Lewis:

I am, of course, still with you as to the result in these cases. I have concluded, however, that I shall wait to see what the forthcoming dissent has to say before I cast my final vote.

Sincerely,



Justice Powell

cc: The Conference

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SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

'84 MAR 33 A9:43

April 2, 1984

Re: No. 82-15 - Oliver v. United States
No. 82-1273 - Maine v. Thornton

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 12, 1983

82-15 Oliver v. United States
82-1273 Maine v. Thornton

Dear Thurgood:

Since you expect to write a dissent in these cases, I want you to know that I may make a number of changes in my first draft.

I hope to recirculate sometime this week.

Sincerely,

Lewis

Justice Marshall

lfp/ss

December 20, 1983

82-15 Oliver v. United States
82-1273 Maine v. Thornton

Dear Byron:

Here is a substantially revised draft of my open fields opinion.

I have restructured it with the view to obtaining your join, at least for parts of it. I am grateful to you for making me focus more sharply on the language of the Amendment itself. I do think it desirable to show that developments in the law of Fourth Amendment doctrine are consistent with both the language and the intent of the Founders.

My thanks to you for your assistance.

Sincerely,

Justice White

lfp/ss

December 20, 1983

82-15 Oliver v. United States
82-1273 Maine v. Thornton

Dear Bill:

Here is my revised draft of the open fields cases in which I have made a number of changes, and tried also to reflect your most helpful suggestions.

Sincerely,

Justice Rehnquist

lfp/ss

December 20, 1983

82-15 Oliver v. United States
81-1273 Maine v. Thornton

Dear Sandra:

In view of your suggestions, and some conversation both with Bill Rehnquist and Byron, I have made substantial revisions particularly in the structure of my opinion in these two cases. The purpose primarily was to place greater emphasis on the language of the Fourth Amendment itself. In the process, I have tried to incorporate your helpful suggestions.

Sincerely,

Justice O'Connor

lfp/ss

12/19

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

pp. 4-12

SUPREME COURT OF THE UNITED STATES

Nos. 82-15 AND 82-1273

82-15 RAY E. OLIVER, PETITIONER
v.
UNITED STATES

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

82-1273 MAINE, PETITIONER
v.
RICHARD THORNTON

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

[December —, 1983]

JUSTICE POWELL delivered the opinion of the Court.

The "open fields" doctrine, first enunciated by this Court in *Hester v. United States*, 265 U. S. 57 (1924), permits police officers to enter and search a field without a warrant. We granted certiorari in these cases to clarify confusion that has arisen as to the continued vitality of the doctrine.

I

No. 82-15. Acting on reports that marijuana was being raised on the farm of petitioner Oliver, two narcotics agents of the Kentucky State Police went to the farm to investigate.¹ Arriving at the farm, they drove past petitioner's house to a locked gate with a "No Trespassing" sign. A foot-path led around one side of the gate. The agents walked

¹It is conceded that the police did not have a warrant authorizing the search, that there was no probable cause for the search and that no exception to the warrant requirement is applicable.

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04/05

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

From: Justice Powell

Circulated: _____

Recirculated: APR 6 1984

Pgs. 4-5, 8, 10, 12

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-15 AND 82-1273

82-15 RAY E. OLIVER, PETITIONER
v.
UNITED STATES

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

82-1273 MAINE, PETITIONER
v.
RICHARD THORNTON

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

[April —, 1984]

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HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1984

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Oliver v. United States, No. 82-15

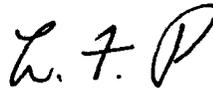
Anderson v. Oklahoma, No. 82-2030

An informant led drug enforcement officers to a patch of marijuana on land leased by petitioner. Arriving at the patch, the officers observed petitioner harvesting the plants. They arrested him and seized the marijuana. A subsequent search pursuant to warrant seized additional evidence.

The Oklahoma Supreme Court affirmed the trial court's denial of petitioner's motion to suppress, relying upon Hester v. United States, 265 U.S. 57 (1924). The state Supreme Court found that the search had occurred in an open field.

As the decision below is consistent with Oliver v. United States, the petition should be denied.

OK



L. F. P.

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HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1984

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Oliver v. United States, No. 82-15

Ingle v. Arkansas, No. 83-67

In response to an anonymous tip, the police entered petitioner's land to search for marijuana. After driving a short distance down a private road, the police found the road blocked and proceeded a short distance on foot. They came upon a tent near which 3,000 marijuana plants were growing. The police found petitioner at a house trailer, where he was arrested.

The Arkansas Court of Appeals upheld the trial court's denial of petitioner's motion to suppress, finding that the plants were in an open field and relying upon Hester v. United States, 265 U.S. 57 (1924).

As the state courts' reasoning is consistent with Oliver v. United States, the petition should be denied. OK

L. F. P.
L. F. P.

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1984

MEMORANDUM TO THE CONFERENCE

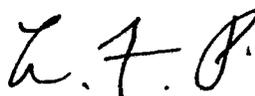
RE: Cases Held for Oliver v. United States, No. 82-15

Berrong v. United States, No. 83-988

In response to an anonymous tip, the Georgia police surveyed the property of petitioner Berrong from the air and observed a field of marijuana. The police then entered the field without a warrant and seized the marijuana. The field was about a quarter of a mile from a house located on the property.

The District Court denied petitioners' motion to suppress the marijuana, and the Court of Appeals for the Eleventh Circuit affirmed. The Court of Appeals reasoned that petitioner had no reasonable expectation of privacy in the open fields, that were outside the curtilage.

As this reasoning is consistent with Oliver v. United States, I would deny the petition. OK



L. F. P.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1984

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Oliver v. United States, No. 82-15

Olson v. Georgia, No. 83-1011

Acting on an anonymous tip that marijuana was being grown on petitioner's land, police officers entered the land and came to an abandoned house. The officers found marijuana under a plastic sheet in the front yard of the house. Shortly thereafter, the police observed petitioner loading the marijuana into a truck. The police stopped the truck at the entrance to petr's property and arrested petr. A subsequent search pursuant to warrant discovered additional marijuana at various locations on the property.

Petitioner was convicted of trafficking in marijuana. At trial and on appeal he contended that all of the marijuana found on his property should have been suppressed. The Court of Appeals held that the initial warrantless search was legal under the open fields doctrine. The abandoned house was over half a mile away from the residence on the property and not visible from the residence; therefore the abandoned house was not within the curtilage. The Georgia Supreme Court denied certiorari.

As the state court's analysis is consistent with Oliver, I would deny the petition.

OK

L. F. P.
L. F. P.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1984

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Oliver v. United States, No. 82-15

United States v. Dunn, No. 82-508

DEA agents and a local police officer entered respondent's ranch, crossing several fences. They observed chemical equipment in an open barn, but did not enter the barn. The agents returned twice to observe the equipment and to install automobile detection devices on the drive and at the gate of the barn. Finally, the agents, executing a warrant, arrested respondent and seized chemical and equipment found while searching the premises.

The Court of Appeals for the Fifth Circuit reversed respondent's conviction for illegal manufacture of phenylacetone and amphetamine. The Court of Appeals held that the warrantless entries upon respondent's ranch violated the Fourth Amendment. The court reasoned that the open fields doctrine did not apply, as the ranch and the barn, that were surrounded by fences, were therefore "within the curtilage of the residence."

Although Oliver recognizes that the Fourth Amendment applies to searches of the curtilage, the Court's opinion makes clear that the curtilage includes only the area immediately surrounding the home to which reasonable expectations of privacy extend. As the Court of Appeals opinion may be inconsistent with this reasoning, its judgment should be vacated and the case remanded for further consideration.

L. F. P.
L. F. P.

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OK

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1984

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Oliver v. United States, No. 82-15

Florida v. Brady, No. 81-1636

To observe an airplane that was to deliver marijuana at a private airstrip, police officers entered upon a 1,800 acre field owned by respondent Brady. The airstrip was located in the middle of the field. The officers seized the evidence when the plane arrived. The state trial court granted respondents' motion to exclude the evidence. The Florida Supreme Court affirmed, holding that, under Katz v. United States, 389 U.S. 347 (1967), respondents had a reasonable expectation of privacy in the fields. Subsequent papers filed with the Court show that the case is moot as to Brady, who is no longer subject to prosecution, but may remain live with reference to the other four respondents.

The petition should be dismissed as to Brady. With respect to the other respondents, I would grant, vacate and remand, as the holding of the Florida Supreme Court appears inconsistent with Oliver v. United States. OK

L. F. P.
L. F. P.

HAB

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1984

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Oliver v. United States, No. 82-15

Bentley v. United States, No. 83-5027

DEA agents attached a beeper to a pharmaceutical press. The agents lost track of the beeper signal. Searching for a pharmaceutical tablet press, they entered the farm property of one Gary Black and discovered the press in a pickup truck parked in a small barn on the farm. Eventually, when the press was located on another property, DEA agents seized the press pursuant to a warrant. Petitioner and Black were jointly tried and convicted of conspiracy to manufacture methaqualone and possession of punches and dies to imprint a drug company name. Black did not appeal.

On appeal, the Court of Appeals for the Eighth Circuit rejected petitioner's challenge to the search of the press on Black's farm. The court reasoned that the search violated no expectation of privacy on the part of petitioner because petitioner had no possessory interest in the farm.

Although the Eighth Circuit's reasoning presents an unsettled question, it appears that the search probably would be lawful in any event because it occurred in an open field. A remand might do little to clarify whether the search would be lawful under Oliver, as the Court of Appeals could reinstate its judgment without reaching the open fields question. Therefore, I would deny the petition.

L. F. P.
L. F. P.

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OK

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 16, 1983

Re: Nos. 82-15 & 82-1273 Oliver v. United States

Dear Lewis:

You would make me happy enough to join your opinion in this case if you could adopt the following suggestions. Each is premised on the idea that the "reasonableness" of someone's expectation of privacy goes to the issue of whether or not there was a search at all, as opposed to the "reasonableness" of a search or seizure under the Fourth Amendment, which depends upon whether probable cause exists or whether a warrant is required.

On page 5 could you delete the second sentence, which deals with warrantless searches, rather than with the question of whether a particular governmental intrusion is a search at all?

On page 10, in the sentence beginning on the third line of the page, substitute for the phrase "warrantless search," the phrase "a governmental intrusion."

On page 10, in the first sentence of the first full paragraph on the page, substitute for the phrase "nor is search of a field 'unreasonable'", the phrase "nor is a governmental intrusion a 'search.'"

Sincerely,



Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

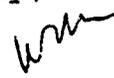
December 20, 1983

Re: Nos. 82-15 & 82-1273 Oliver v. United States

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 8, 1983

Re: 82-15 - Oliver v. United States
82-1273 - Maine v. Thornton

Dear Lewis:

I will wait for Thurgood's dissent.

Respectfully,



Justice Powell

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①
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

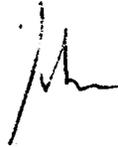
March 26, 1984

Re: 82-15 - Oliver v. United States
82-1273 - Maine v. Thornton

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED
SUPREME COURT, U.S.
JUSTICE SANDRA DAY O'CONNOR

December 21, 1983 '83 DEC 21 A11:23

No. 82-15 Oliver v. United States
No. 82-1273 Maine v. Thornton

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

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