The Burger Court Opinion Writing Database

United States v. Leon

468 U.S. 897 (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

March 29, 1984

Re: 82-1771 - United States v. Leon

Dear Byron:

This will confirm my earlier "join."

Regards,

WEB

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 23, 1984

No. 82-1771

United States v. Leon

Dear Thurgood and John,

Thurgood and I would remand and, as my notes indicate John, that you'd reverse outright on the ground of no violation. I'll undertake the dissent for Thurgood and myself on the good faith issue.

Sincerely,

Bill

Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 24, 1984

No. 82-1771

United States v. Leon, et al.

No. 82-963

Massachusetts v. Sheppard

Dear Byron,

In due course I will circulate a dissent in the above cases.

Sincerely,

Bill

Justice White

Copies to the Conference

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

From: Justice Brennan

Circulated: JUL 2 1984

Recirculated: _____

UNITED STATES v. LEON

No. 82-1771

MASSACHUSETTS v. SHEPPARD

No. 82-963

JUSTICE BRENNAN, dissenting.

Ten years ago in United States v. Calandra, 414 U.S. 338 (1974), I expressed the fear that the Court's decision "may signal that a majority of my colleagues have positioned themselves to reopen the door [to evidence secured by official lawlessness] still further and abandon altogether the exclusionary rule in search-and-seizure cases." Id., at 365 (BRENNAN, J., dissenting). Since then, in case after case, I have witnessed the Court's gradual but determined strangulation of the rule.[1] It now appears that the Court's victory over the Fourth Amendment is complete. That today's decision represents the piece de resistance of the Court's past efforts cannot be

[1]See, e.g., United States v. Peltier, 422 U.S. 531, 544 (1975) (BRENNAN, J., dissenting); United States v. Janis, 428 U.S. 433, 460 (1976) (BRENNAN, J., dissenting); Stone v. Powell, 428 U.S. 465, 502 (BRENNAN, J., dissenting); Michigan v. DeFillippo, 443 U.S. 31, 41 (1979) (BRENNAN, J., dissenting); United States v. Havens, 446 U.S. 620, 629 (1980) (BRENNAN, J., dissenting).

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

From: **Justice White**

Circulated: FEB 23 1984

Recirculated: _____

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 3, 8, 9

I will circulate

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1771

UNITED STATES, PETITIONER *v.* ALBERTO ANTONIO LEON ET AL.

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

[February ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. To resolve this question, we must consider once again the tension between the sometimes competing goals of, on the one hand, deterring official misconduct and removing inducements to unreasonable invasions of privacy and, on the other, establishing procedures under which criminal defendants are "acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U. S. 165, 175 (1969).

I

In August 1981, a confidential informant of unproven reliability informed an officer of the Burbank Police Department that two persons known to him as "Armando" and "Patsy" were selling large quantities of cocaine and methaqualone from their residence at 620 Price Drive in Burbank, Cal. The informant also indicated that he had witnessed a sale of methaqualone by "Patsy" at the residence approximately five months earlier and had observed at that time a shoebox containing a large amount of cash that belonged to "Patsy." He

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 28, 1984

Re: 82-1771 - United States v. Leon

Dear Lewis,

I do appreciate your suggestions. I shall add a cite to Bustamente and have eliminated the 3d sentence of footnote 18. However, I would prefer not to put the 2d paragraph of that footnote in the text and would like to retain the sentence on page 22 that you discuss. I hope this does not upset you too much, since I would like to retain your vote.

Sincerely,

Byron

Justice Powell

cpm

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 2 8 1984

Stylistic and pp. 14, 18, 22, & 26

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1771

UNITED STATES, PETITIONER *v.* ALBERTO ANTONIO LEON ET AL.

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

[February ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. To resolve this question, we must consider once again the tension between the sometimes competing goals of, on the one hand, deterring official misconduct and removing inducements to unreasonable invasions of privacy and, on the other, establishing procedures under which criminal defendants are "acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U. S. 165, 175 (1969).

I

In August 1981, a confidential informant of unproven reliability informed an officer of the Burbank Police Department that two persons known to him as "Armando" and "Patsy" were selling large quantities of cocaine and methaqualone from their residence at 620 Price Drive in Burbank, Cal. The informant also indicated that he had witnessed a sale of methaqualone by "Patsy" at the residence approximately five months earlier and had observed at that time a shoebox containing a large amount of cash that belonged to "Patsy." He

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1771

UNITED STATES, PETITIONER *v.* ALBERTO ANTONIO LEON ET AL.

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

[March ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. To resolve this question, we must consider once again the tension between the sometimes competing goals of, on the one hand, deterring official misconduct and removing inducements to unreasonable invasions of privacy and, on the other, establishing procedures under which criminal defendants are "acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U. S. 165, 175 (1969).

I

In August 1981, a confidential informant of unproven reliability informed an officer of the Burbank Police Department that two persons known to him as "Armando" and "Patsy" were selling large quantities of cocaine and methaqualone from their residence at 620 Price Drive in Burbank, Cal. The informant also indicated that he had witnessed a sale of methaqualone by "Patsy" at the residence approximately five months earlier and had observed at that time a shoebox containing a large amount of cash that belonged to "Patsy." He

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

From: **Justice White**

Circulated: _____

Recirculated: MAR 2 1 1984

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 22

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1771

UNITED STATES, PETITIONER *v.* ALBERTO ANTONIO LEON ET AL.

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

[March ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. To resolve this question, we must consider once again the tension between the sometimes competing goals of, on the one hand, deterring official misconduct and removing inducements to unreasonable invasions of privacy and, on the other, establishing procedures under which criminal defendants are "acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U. S. 165, 175 (1969).

I

In August 1981, a confidential informant of unproven reliability informed an officer of the Burbank Police Department that two persons known to him as "Armando" and "Patsy" were selling large quantities of cocaine and methaqualone from their residence at 620 Price Drive in Burbank, Cal. The informant also indicated that he had witnessed a sale of methaqualone by "Patsy" at the residence approximately five months earlier and had observed at that time a shoebox containing a large amount of cash that belonged to "Patsy." He

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

From: **Justice White**

Circulated: _____

Recirculated: JUN 26 1984

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1771

UNITED STATES, PETITIONER *v.* ALBERTO ANTONIO LEON ET AL.

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

[July ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether the Fourth Amendment exclusionary rule should be modified so as not to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause. To resolve this question, we must consider once again the tension between the sometimes competing goals of, on the one hand, deterring official misconduct and removing inducements to unreasonable invasions of privacy and, on the other, establishing procedures under which criminal defendants are "acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U. S. 165, 175 (1969).

I

In August 1981, a confidential informant of unproven reliability informed an officer of the Burbank Police Department that two persons known to him as "Armando" and "Patsy" were selling large quantities of cocaine and methaqualone from their residence at 620 Price Drive in Burbank, Cal. The informant also indicated that he had witnessed a sale of methaqualone by "Patsy" at the residence approximately five months earlier and had observed at that time a shoebox containing a large amount of cash that belonged to "Patsy." He

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 29, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for United States v. Leon, No. 82-1771

Mahoney v. United States, No. 83-5614

A federal grand jury returned an indictment charging twelve defendants with RICO violations. One of the defendants was identified as "John Doe, a/k/a, 'Dennis' (last name unknown)." State and federal law enforcement authorities later learned the race, height, and hair color of Dennis, but the arrest warrant issued by a federal magistrate described its subject only as "John Doe a/k/a Dennis." One of petr's co-defendants subsequently identified petr as "Dennis," and Houston Police officers arrested him at his home pursuant to the warrant. Petr subsequently confessed to drug dealing and murder.

The DC supressed the confession, ruling that the arrest was invalid because the warrant did not describe petr with particularity, that the arrest could not be sustained as a valid warrantless arrest because the warrantless entry to make the arrest violated Texas law and the Fourth Amendment, and that petr's confession was the fruit of the illegal arrest. The DC found that the officers "executed the arrest warrant in the belief that it was valid," but it refused to apply a good-faith exception to the exclusionary rule because this Court had not yet recognized such an exception and because, "under Texas law, an arresting officer's good faith does not suffice to purge an unlawful arrest of its illegality insofar as the exclusion of evidence is concerned."

On appeal, the government contended, inter alia, that the good-faith exception adopted in United States v. Williams, 622 F.2d 830 (en banc), cert. denied, 449 U.S. 1127 (1981), was applicable. CA5 assumed without deciding that the legality of a state officer's conduct may be measured by state law, but this assumption did not lead to the conclusion that state law should govern a federal court's decision whether to admit illegally obtained evidence. CA5 held that federal law controlled on the question of the application of the exclusionary rule whether or not the legality of the underlying arrest turns on state law. It then applied the good-faith exception it had announced in Williams (a two-pronged test with a subjective and an objective component), and concluded that applying the exclusionary rule in this case would not promote deterrence of illegal police conduct

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

July 3, 1984

MEMORANDUM TO THE CONFERENCE

Re: 82-1771 - **United States v. Leon**

82-963 - **Massachusetts v. Sheppard**

I am content to leave the circulating drafts in these cases as they are; and if Bill is, I am ready to have them come down on Thursday.

B.R.W.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 24, 1984

Re: No. 82-1771-United States v. Alberto Antonio Leon, et al.

Dear Byron:

I await the dissent.

Sincerely,

TM

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 13, 1984

Re: No. 82-1771, United States v. Leon

Dear Byron:

For now, I think I shall await the other writings that will be forthcoming. I may even write a word or two myself.

Sincerely,

Harry

Justice White

cc: The Conference

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

From: **Justice Blackmun**

Circulated: MAR 15 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1771

UNITED STATES, PETITIONER *v.* ALBERTO ANTONIO LEON ET AL.

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

[March ——, 1984]

JUSTICE BLACKMUN, concurring.

The Court today holds that evidence obtained in violation of the Fourth Amendment by officers acting in objectively reasonable reliance on a search warrant issued by a neutral and detached magistrate need not be excluded, as a matter of federal law, from the case-in-chief of federal and state criminal prosecutions. In so doing, the Court writes another chapter in the volume of Fourth Amendment law opened by *Weeks* v. *United States*, 232 U. S. 383 (1914). I join the Court's opinion in this case and the one in *Massachusetts* v. *Sheppard*, *post*, because I believe that the rule announced today advances the legitimate interests of the criminal justice system without sacrificing the individual rights protected by the Fourth Amendment. I write separately, however, to underscore what I regard as the unavoidably provisional nature of today's decisions.

As the Court's opinion in this case makes clear, the Court has narrowed the scope of the exclusionary rule because of an empirical judgment that the rule has little appreciable effect in cases where officers act in objectively reasonable reliance on search warrants. See *ante*, at 18–22. Because I share the view that the exclusionary rule is not a constitutionally compelled corrollary of the Fourth Amendment itself, see *ante*, at 6, I see no way to avoid making an empirical judgment of this sort, and I am satisfied that the Court has made

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 15, 1984

Re: No. 82-1771, United States v. Leon

Dear Byron:

Please join me.

Sincerely,

Harry

Justice White

cc: The Conference

February 25, 1984

82-1771 United States v. Leon

Dear Byron:

In a separate note, I have joined your opinion. I write to say, first, that it is excellent and will be a landmark decision.

I like your standard of "objectively reasonable" (or "objective reasonableness"), as it avoids the problem you and I sought to rectify in my opinion in Harlow.

This is an area in which I have had more than a little interest since I read Dallin Oaks' Chicago Law Review article (that you cite) my first Term here. You may recall that I addressed the utility of the exclusionary rule in my concurring opinion in Bustamonte. See particularly 417 U.S. 283, at pp. 261-271. Perhaps you would be willing to add a citation to Bustamonte at some appropriate place.

I do have a couple of relatively minor suggestions. In note 18, p. 18, I would omit the third sentence beginning: "To the extent . . ." This sentence may stimulate suspicion that we are shifting responsibility. The second paragraph in n. 18 is important. Did you consider including it in the text rather than subordinating it to a footnote? On p. 22, I would omit the second sentence in the first paragraph. If I understand it correctly, what is says is obvious.

In sum, I think your opinion in Leon is particularly constructive. I believe that John - and possibly others who dissent from Leon - will agree with us in Sheppard - in which probable cause existed and a judge used the wrong form!

Sincerely,

Justice White

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 25, 1984

82-1771 United States v. Leon

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice Powell

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 28, 1984

Re: No. 82-1771 United States v. Leon

Dear Byron:

Please join me.

Sincerely,

WHR

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 15, 1984

No. 82-1771 United States v. Leon

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

Copies to the Conference