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
Forrest Maltzman, George Washington University

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

From: **The Chief Justice**

Circulated: OCT 1 [illegible]

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[October ——, 1983]

PER CURIAM.

After hearing hearing oral argument and fully examining the record, we conclude that the totality of the circumstances did not warrant bringing the case here. Accordingly, the writ of certiorari is dismissed as improvidently granted.

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

From: **The Chief Justice**

Circulated: _____

Recirculated: OCT 19 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[October ——, 1983]

PER CURIAM.

After hearing oral argument and fully examining the record, we conclude that the totality of the circumstances did not warrant bringing the case here. Accordingly, the writ of certiorari is dismissed as improvidently granted.

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

CHAMBERS OF
THE CHIEF JUSTICE

January 6, 1984

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill:

Will you take on a draft opinion in this case?

Regards,

WEB

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 30, 1984

RE: 82-5466 - Welsh v. Wisconsin

Dear Bill:

I join your January 26th per curiam.

Regards,

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 31, 1984

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill:

I join your January 31 Per Curiam.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

Xc: J

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

RECEIVED
CHAMBERS OF THE
CHIEF JUSTICE

1984 FEB 27 P3:39

February 27, 1984

No. 82-5466

Welsh v. Wisconsin

Dear Chief,

In view of Lewis' circulation and Bill Rehnquist's note, am I not to assign the opinion for the Court?

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 27, 1984

MEMORANDUM TO THE CONFERENCE

Re: 82-5466 - Welsh v. Wisconsin

You have Bill Rehnquist's memo of February 27, 1984 "withdrawing" because too many have withdrawn.

I vote to DIG.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1984

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill:

Please show me

"The Chief Justice would dismiss the writ as having been improvidently granted and defer resolution of the question presented to a more appropriate case."

Regards,

WEB

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 11, 1983

Re: Welsh v. Wisconsin, No. 82-5466

Dear Chief:

You suggested in the assignment sheet that a more complete explanation of the Conference decision in the above case would appear in a Per Curiam if a dissent was to be written. This prompts me to advise you that I do intend to circulate a dissent from the decision to DIG the case. I would, of course, prefer to frame a dissent addressed to the grounds upon which the Per Curiam rests.

Sincerely,

WJB, Jr.

Chief Justice Burger
Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 17, 1983

MEMORANDUM TO THE CONFERENCE

No. 82-5466

Welsh v. Wisconsin

Supplementing my memorandum of October 11, 1983 in the above, I have decided that I shall write in dissent.

Sincerely,

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

From: **Justice Brennan**

Circulated: 12/14/83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[December ——, 1983]

JUSTICE BRENNAN, dissenting.

In *Payton* v. *New York*, 445 U. S. 573 (1980), the Court concluded that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. At the same time, we explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was originally granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense. Because, in my view, this case presents a record that compels us to decide that question, I cannot agree that the Court should dismiss the writ of certiorari as improvidently granted. I therefore reach the merits of the question presented and would reverse the judgment of the Supreme Court of Wisconsin.

I

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Shortly before 9:00 p. m. on the rainy night of April 24, 1978, a lone witness, Randy Jablonic, observed a car that was being driven erratically. After changing speeds and veering from side to side, the car eventually swerved off the road and

changes: p. 1 + stylistic

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 12/21/83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[January ——, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE STEVENS joins in all but Part II–A, dissenting.

In *Payton* v. *New York*, 445 U. S. 573 (1980), the Court concluded that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. At the same time, we explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was originally granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense. Because, in my view, this case presents a record that compels us to decide that question, I cannot agree that the Court should dismiss the writ of certiorari as improvidently granted. I therefore reach the merits of the question presented and would reverse the judgment of the Supreme Court of Wisconsin.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 27, 1983

Re: Welsh v. Wisconsin, No. 82-5466

Dear Lewis:

At our Conference after oral argument on this case, the Court agreed to dismiss the writ of certiorari as improvidently granted. If I recall our Conference correctly, while noting that you would not dissent from a DIG, you also agreed that the judgment below should be reversed. Thurgood and Harry, who originally proposed the DIG, now agree that a DIG is inappropriate. Given their change in position, we are now faced with a situation in which the four who originally voted to grant the writ of certiorari are dissenting from the DIG.

Although there are obviously no set rules that control the propriety of a DIG, the Court has previously acknowledged that the five Justices who originally voted to deny the writ will DIG a case only in the most narrow of circumstances. As Justice Harlan explained in the leading case in this area:

> "I think the Court should not have heard any of these four cases. Nevertheless, the cases having been taken, I have conceived it to be my duty to consider them on their merits, because I cannot reconcile voting to dismiss the writs as "improvidently granted" with the Court's "rule of four." In my opinion due adherence to that rule requires that once certiorari has been granted a case should be disposed of on the premise that it is properly here, in the absence of considerations appearing which were not manifest or fully apprehended at the time certiorari was granted." Ferguson v. Moore-McCormack Lines, Inc., 352 U.S. 521, 559 (1957) (separate opinion).

See The Monrosa v. Carbon Black Export, Inc., 359 U.S. 180 (1959) (DIG appropriate when "[e]xamination of a case on the merits, on oral argument, ... bring[s] into 'proper focus' a consideration which, though present in the record at the time of granting the

writ, only later indicates that the grant was improvident"). Compare Triangle Improvement Council v. Ritchie, 402 U.S. 497, 502 (1971) (Harlan, J., concurring) (DIG appropriate "in light of ... changed posture of the case) with id., at 508 (Douglas, J., dissenting) (so as not to impair the "rule of four", it is "the duty of the five opposing certiorari to persuade others at Conference, but, failing that, to vote on the merits of the case"). See also Donnelly v. DeChristoforo, 416 U.S. 637, 648 (Stewart, J., concurring) ("If as many as four Justices remain so minded after oral argument, due adherence to that rule requires me to address the merits of a case, however strongly I may feel that it does not belong in this Court.").

In this case, there has been no intervening change in circumstances since the writ was granted. Nor did consideration of the case on the merits after oral argument focus the Court on any factors that were not known at the time the case was granted. Indeed, if anything, I believe the posture of the case has been clarified since last February, when the original vote to grant was taken. Therefore, because the case does not fall within any of our established criteria to justify a DIG, don't you think that it is our responsibility to decide the case on its merits? If so, I would be happy to turn the narrow conclusion of Part II-B of my draft dissent into an opinion for the Court.

Sincerely,

WJB, Jr.

Justice Powell

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 12/29/83

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[January ——, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BLACKMUN and JUSTICE STEVENS join in all but Part II–A, dissenting.

In *Payton* v. *New York*, 445 U. S. 573 (1980), the Court concluded that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. At the same time, we explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was originally granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense. Because, in my view, this case presents a record that compels us to decide that question, I cannot agree that the Court should dismiss the writ of certiorari as improvidently granted. I therefore reach the merits of the question presented and would reverse the judgment of the Supreme Court of Wisconsin.

I

A

Shortly before 9:00 p. m. on the rainy night of April 24, 1978, a lone witness, Randy Jablonic, observed a car that was

p. 15

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 1/6/84

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[January ——, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BLACKMUN and JUSTICE STEVENS join in all but Part II–A, dissenting.

In *Payton* v. *New York*, 445 U. S. 573 (1980), the Court concluded that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. At the same time, we explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was originally granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense. Because, in my view, this case presents a record that compels us to decide that question, I cannot agree that the Court should dismiss the writ of certiorari as improvidently granted. I therefore reach the merits of the question presented and would reverse the judgment of the Supreme Court of Wisconsin.

I

A

Shortly before 9:00 p. m. on the rainy night of April 24, 1978, a lone witness, Randy Jablonic, observed a car that was

changes 1, 4-6, 18

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 2/27/84

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[February ——, 1984]

JUSTICE BRENNAN, dissenting.

In *Payton* v. *New York*, 445 U. S. 573 (1980), the Court concluded that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. At the same time, we explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was originally granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense. Because, in my view, this case presents a record that compels us to decide that question, I cannot agree that the Court should dismiss the writ of certiorari as improvidently granted. I therefore reach the merits of the question presented and would reverse the judgment of the Supreme Court of Wisconsin.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 27, 1984

No. 82-5466

Welsh v. Wisconsin

Dear Chief,

In view of Lewis' circulation and Bill Rehnquist's note, am I not to assign the opinion for the Court?

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 28, 1984

No. 82-5466

Welsh v. Wisconsin

Dear Chief,

I'll try my hand at an opinion for the Court in the above.

Sincerely,

Bill

The Chief Justice

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: 3/5/84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[March ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

Payton v. *New York*, 445 U. S. 573 (1980), held that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. But the Court in that case explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense.

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Shortly before 9:00 p. m. on the rainy night of April 24, 1978, a lone witness, Randy Jablonic, observed a car being driven erratically. After changing speeds and veering from side to side, the car eventually swerved off the road and came to a stop in an open field. No damage to any person or property occurred. Concerned about the driver and fearing that the car would get back on the highway, Jablonic drove his truck up behind the car so as to block it from returning to the

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 12, 1984

Re: Welsh v. Wisconsin, No. 82-5466

Dear Lewis:

Thank you for your letter of March 8. Mary and I just returned from a brief visit to Berkeley, California, so I have just had a chance to review your suggestions for the proposed opinion.

I appreciate your concern that we not articulate general rules that will cover all determinations of exigent circumstances. To that extent, the proposed opinion is only intended to suggest an approach for cases involving warrantless home arrests in which the underlying offense is extremely minor. Indeed, those lower courts that have been faced with such cases have floundered in their attempts to articulate any meaningful guidelines, and the years that have passed since Payton suggest that it is time for the Court to address at least this narrow area.

As for your specific suggestions, you are quite correct in focusing on the "compelling need" language on page 9. In line with your suggestion, I propose to change that sentence to read as follows: "Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries." As for the language on page 12, I would prefer not to eliminate this clause in its entirety. At the same time, the term "minor offense" is not intended to cover all nonfelony crimes. Although, as my prior draft dissent in this case indicated, I believe there is a strong argument in support of an absolute ban on warrantless home arrests for certain offenses, the opinion intentionally leaves that issue unresolved. To eliminate any inference that "minor offense" will be interpreted to mean all nonfelonies, I propose that the following clause be added: "application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind at issue in this case, has been committed."

Would these revisions eliminate the problem?

Sincerely,

Justice Powell

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 3/13/84

changes 9, 13

'84 MAR 13 P2:12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[March ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

Payton v. *New York*, 445 U. S. 573 (1980), held that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. But the Court in that case explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense.

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

From: **Justice Brennan**

Circulated: _____

Recirculated: MAY 1 1 1984

p. 14

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[March ——, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

Payton v. *New York*, 445 U. S. 573 (1980), held that, absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fourth Amendment. But the Court in that case explicitly refused "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." *Id.*, at 583. Certiorari was granted in this case to decide at least one aspect of the unresolved question: whether, and if so under what circumstances, the Fourth Amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 20, 1983

Re: 82-5466 - Welsh v. Wisconsin

Dear Chief,

I agree.

Sincerely,

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

February 14, 1984

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill,

Please join me.

Sincerely,

Byron

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: APR 30 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[May ——, 1984]

JUSTICE WHITE, dissenting.

At common law, "a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable ground for making the arrest." *United States* v. *Watson*, 423 U. S. 411, 418 (1976). But the requirement that a misdemeanor must have occurred in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment, see *Street* v. *Surdyka*, 492 F. 2d 368, 371–372 (CA4 1974); 2 W. LaFave, Search and Seizure § 5.1 (1978), and we have never held that a warrant is constitutionally required to arrest for nonfelony offenses occurring out of the officer's presence. Thus, "it is generally recognized today that the common law authority to arrest without a warrant in misdemeanor cases may be enlarged by statute, and this has been done in many of the states." E. Fisher, Laws of Arrest 130 (1967); see ALI, A Model Code of Pre-Arraignment Procedure, App. X (1975); 1 C. Alexander, The Law of Arrest 445–447 (1949); Wilgas, Arrest Without a Warrant, 22 Mich. L. Rev. 541, 673, 706 (1924).

Wisconsin is one of the states that have expanded the common-law authority to arrest for nonfelony offenses. Section 345.22 of the Wisconsin Statutes provides that "[a] person may be arrested without a warrant for the violation of a traffic regulation if the traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic

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

From: **Justice White**

Circulated: _____

Recirculated: MAY 7 1984

sty Justice + p. 1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[May —, 1984]

JUSTICE WHITE, with whom JUSTICE REHNQUIST joins, dissenting.

At common law, "a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable ground for making the arrest." *United States* v. *Watson*, 423 U. S. 411, 418 (1976). But the requirement that a misdemeanor must have occurred in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment, see *Street* v. *Surdyka*, 492 F. 2d 368, 371–372 (CA4 1974); 2 W. LaFave, Search and Seizure § 5.1 (1978), and we have never held that a warrant is constitutionally required to arrest for nonfelony offenses occurring out of the officer's presence. Thus, "it is generally recognized today that the common law authority to arrest without a warrant in misdemeanor cases may be enlarged by statute, and this has been done in many of the states." E. Fisher, Laws of Arrest 130 (1967); see ALI, A Model Code of Pre-Arraignment Procedure, App. X (1975); 1 C. Alexander, The Law of Arrest 445–447 (1949); Wilgas, Arrest Without a Warrant, 22 Mich. L. Rev. 541, 673, 706 (1924).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 14, 1983

Re: No. 82-5466-Welsh v. Wisconsin

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 30, 1984

Re: No. 82-5466-Welsh v. Wisconsin

Dear Bill:

I agree with the first paragraph and the judgment in this case.

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

pp. 1, 2, 5

To: 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).

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

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 2, 1984

Re: No. 82-5466-Welsh v. Wisconsin

Dear Bill:

I hope I am no longer confused in this case. As of now, I would like to be permitted to withdraw my note joining in parts of your opinion.

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 7, 1984

Re: No. 82-5466-Welsh v. Wisconsin

Dear Bill:

Please join me in your circulation of March 5.

Sincerely,

T.M.

T.M.

Justice Brennan

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: DEC 23 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[January ——, 1984]

JUSTICE BLACKMUN, dissenting.

I yield to no one in my profound personal concern about the unwillingness of our national consciousness to face up to—and to do something about—the continuing slaughter upon our Nation's highways, a good percentage of which is due to drivers who are drunk or semi-incapacitated because of alcohol or drug ingestion. I have spoken in these Reports to this point before. *Perez* v. *Campbell*, 402 U. S. 637, 657 and 672 (1971) (BLACKMUN, J., concurring in part and dissenting in part); *Tate* v. *Short*, 401 U. S. 395, 401 (1971) (BLACKMUN, J., concurring). See also *South Dakota* v. *Neville*, —— U. S. ——, —— (1983) (slip op. 5).

And it is amazing to me that one of our great States—one which, by its highway signs, proclaims to be diligent and emphatic in its prosecution of the drunk driver—still classifies Driving While Intoxicated as a *civil* violation that allows only a money forfeiture of not more than $300 so long as it is a *first* offense. Wis. Stat. § 346.65(2)(a) (Supp. 1983–1984). The State, like the indulgent parent, hesitates to spank the spoiled child, even though he is engaging in an act that is dangerous to others who are law abiding and helpless in the face of the child's act. See BRENNAN, J., dissenting, *ante*, at 12, n. 12 (citing other statutes). Our personal convenience still weighs heavily in the balance and the highway deaths and injuries continue. But if Wisconsin and other States choose by legislation thus to regulate their penalty structure, there is

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 27, 1983

Re: No. 82-5466 - Welsh v. Wisconsin

Dear Bill:

My circulation in this case indicates that I am following John's example and joining your dissenting opinion, except for Part IIA. Of course, I do so with a certain amount of anguish in view of that word "viable" in the fourth line on page 16. You don't appreciate how you make me suffer. I go through this with every generation of clerks. But they better not use "parameter."

Sincerely,

H.

Justice Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 2, 1984

Re: No. 82-5466 - Welsh v. Wisconsin

Dear Bill:

I am still with you as I was before, that is, I join all except part IIA of your dissenting opinion.

Sincerely,

Harry

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 6, 1984

Re: No. 82-5466 - Welsh v. Wisconsin

Dear Bill:

Please join me in your proposed opinion for the Court.

I shall probably retain my separate writing with the necessary revisions.

Sincerely,

Harry

Justice Brennan

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 7 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[March ——, 1984]

JUSTICE BLACKMUN, concurring.

I join the Court's opinion but add a personal observation.

I yield to no one in my profound personal concern about the unwillingness of our national consciousness to face up to—and to do something about—the continuing slaughter upon our Nation's highways, a good percentage of which is due to drivers who are drunk or semi-incapacitated because of alcohol or drug ingestion. I have spoken in these Reports to this point before. *Perez* v. *Campbell*, 402 U. S. 637, 657 and 672 (1971) (opinion concurring in part and dissenting in part); *Tate* v. *Short*, 401 U. S. 395, 401 (1971) (concurring opinion). See also *South Dakota* v. *Neville*, —— U. S. ——, —— (1983) (slip op. 5).

And it is amazing to me that one of our great States—one which, by its highway signs, proclaims to be diligent and emphatic in its prosecution of the drunk driver—still classifies Driving While Intoxicated as a *civil* violation that allows only a money forfeiture of not more than $300 so long as it is a *first* offense. Wis. Stat. §346.65(2)(a) (Supp. 1983–1984). The State, like the indulgent parent, hesitates to discipline the spoiled child very much, even though the child is engaging in an act that is dangerous to others who are law abiding and helpless in the face of the child's act. See *ante*, at 13, n. 13 (citing other statutes). Our personal convenience still weighs heavily in the balance and the highway deaths and injuries continue. But if Wisconsin and other States choose by

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 19, 1983

82-5466 Welsh v. Wisconsin

Dear Chief:

I agree with your Per Curiam.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 28, 1983

82-5466 Welsh v. Wisconsin

Dear Bill:

I appreciate your giving me the opportunity to think further about this case. I believe, however, that it is best for me to stay with my DIG vote.

I consistently voted to "deny" when the cert petition was under consideration. As Thurgood said at Conference, there is "no purpose in our deciding this case as no other state has laws like Wisconsin".

After the case was granted and argued, I was inclined to vote to reverse, though I continued to think we had made a mistake in addressing a unique and a very foolish statute. When it came my turn to vote at Conference, the Chief had voted to affirm or DIG, Byron agreed with the Chief, and Thurgood and Harry also voted to DIG. I was then content to go along with a DIG.

You are right in implying that perhaps I did not recall Justice Harlan's view with respect to when it is appropriate to DIG. My sense of what we have done in the past is that few of us have heeded consistently his quite logical argument.

In sum, Bill, at this late date, and having adhered to my DIG vote after seeing the dissents by you and Harry, I just do not think it appropriate to change a circulated vote that reflects the view I always have had of this case.

Sincerely,

Lewis

Justice Brennan

lfp/ss

02/24

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

From: **Justice Powell**

Circulated: FEB 27 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[February ——, 1984]

JUSTICE POWELL, dissenting.

I voted to deny certiorari in this case, and the opinions filed today reinforce my view that it was a mistake for this Court to agree to review the case. The Wisconsin laws with respect to driving while intoxicated, in effect at the time, may be unique. At least, they suggest an extraordinary degree of tolerance. Driving under the influence was classified as a civil offense—in effect only a traffic offense—requiring a "forfeiture of not more than $200." § 346.65(2) Wisc. Stat. 1975. Moreover, although the case has been considered by three Wisconsin courts, in the end it still could be decided on factual grounds that the state trial court has yet to consider.[1]

We nevertheless granted certiorari, the case has been briefed and argued here, and opinions have been written: a Per Curiam dismissing the case as improvidently granted and dissenting opinions by JUSTICE BRENNAN, JUSTICE BLACK-

[1] The Wisconsin Court of Appeals reversed the trial court, concluding that absent consent the warrantless entry and arrest of petitioner violated the Fourth Amendment. That court remanded the case, however, for further findings as to whether the police had entered petitioner's home with consent—an issue the state trial court had not decided. Before the trial court could consider that issue, the Wisconsin Supreme Court reversed the intermediate appellate court, concluding that exigent circumstances justified the warrantless entry and arrest. Thus it may be that the warrantless entry and arrest are justified even in the absence of exigent circumstances.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1984

82-5466 Welsh v. Wisconsin

Dear Chief:

This refers to your note stating that you vote to DIG because "too many have withdrawn". I had not come to rest finally until my circulation of February 27th.

I voted not to take this case for the reasons mentioned in my opinion. At Conference, there were four votes to DIG when the discussion reached me. I stated that I could join a DIG, but would reverse if the merits were reached.

The reasons advanced in Bill Rehnquist's opinion for not addressing the merits are not the ones that caused me to think we should not take the case. The case was granted and opinions have been circulated. Accordingly, I now think we should decide the merits.

Sincerely,

Lewis

The Chief Justice

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 8, 1984

82-5466 Welsh v. Wisconsin

Dear Bill:

I am certainly with you on the judgment, and agree with most of your opinion. I do have some reservations.

As this case involves only a traffic offense, not even classified as a misdemeanor, it is unnecessary to articulate general rules with respect to the determination of exigent circumstances. The Court declined to undertake this in Payton, and it is unnecessary in this case, involving only a traffic offense, to enunciate views that may apply in all cases involving exigent circumstances. The exigent circumstances exception to the Warrant Clause always has been applied in light of the facts and circumstances of each case.

I would prefer, therefore, not to announce a broad general rule. If we undertake this, there are some portions of your opinion, I cannot join. I certainly agree, as the plurality stated in Payton, that searches and seizures inside a home without a warrant are "presumptively unreasonable". I also agree with Justice Jackson's McDonald statement that whether "urgent circumstances" justify a warrantless entry "depend somewhat upon the gravity of the offense thought to be in process . . ."

I would not hold that "the government is required to demonstrate a compelling need that overcomes the presumption of unreasonableness that attaches to all warrantless home entries." P. 9, your opinion. In every case involving alleged exigent circumstances, defense counsel would be encouraged to demand a showing of "compelling need", our highest burden of proof. Also, I am troubled by the portion of your "holding" paragraph (p. 12) that states:

> "[T]he application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned where there is probable cause to believe that only a minor offense has been committed".

The term "minor offense" usually distinguishes misdemeanors from felonies, and the laws of the several states are far from consistent in their classification of criminal conduct into these categories. Some offenses classified as "misdemeanors" may be quite serious, whereas offenses classified as felonies may be quite minor. See, for example, South Dakota's classification of offenses in my opinion last Term in Solem v. Helm.

Although I would prefer not to enunciate rules of general application with respect to exigent circumstances in a case that involves only a traffic offense, I believe I could join all of your opinion if you modified the sentence on page 9 that would require the showing of a "compelling need". It should be sufficient, in light of the remainder of your opinion, merely to say the "burden is on the government to overcome the presumption . . ." In addition, perhaps you would be willing to omit entirely the final sentence on page 12.

If you prefer to keep the opinion in its present form, I will join all of Part I, and if you would create subdivisions for Part II I could join pages 7-9 and 13-14, including Part III. I would also write briefly, making the points mentioned above.

This case has presented a good deal of difficulty for the Court. I think we are on the right path now. I would like to be able to join all of your opinion.

Sincerely,

Lewis

Justice Brennan

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 13, 1984 '84 MAR 13 P3:26

82-5466 Welsh v. Wisconsin

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

(2)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 19, 1983

Re: No. 82-5466 Welsh v. Wisconsin

Dear Chief:

Please join me in your Per Curiam.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 9, 1984

Re: No. 82-5466 Welsh v. Wisconsin

Dear Chief:

I will try to draft a Per Curiam to support the order for a DIG.

Sincerely,

WHR

The Chief Justice

cc: The Conference

WHR

I agree with the first Proposed [illegible]

RECEIVED
SUPREME COURT U.S.
JUSTICE [illegible]

'84 JAN 26 P2:48

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

From: **Justice Rehnquist**

Circulated: JAN 26 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[January ——, 1984]

PER CURIAM.

We granted certiorari to the Supreme Court of Wisconsin to decide whether a warrantless home arrest for drunk driving, based on probable cause and given allegedly exigent circumstances, violates the Fourth Amendment. After full briefing and oral argument, however, it appears that while the question may technically be presented by the record, it is presented, at best, in a highly atypical and totally abstract way. We therefore dismiss the writ of certiorari as improvidently granted. Resolution of this admittedly important question, see *Payton* v. *New York*, 445 U. S. 573, 583 (1980), "can await a day when the issue is posed less abstractly." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U. S. 180, 184 (1959).

On the night of April 24, 1978, petitioner Welsh drove his car off the road, narrowly averting an accident. He emerged from the car in an obviously inebriated state and asked another motorist for a ride home. Told that he should wait for assistance, petitioner left the scene on foot. The police arrived almost immediately and, after running a license check and taking the other driver's statement, proceeded to Welsh's home a short distance away. The police were admitted by petitioner's stepdaugther who told them that petitioner "just stumbled in" and was upstairs. Petitioner's wife led them up to his room, where they found him in bed. Welsh was arrested and charged with operating a motor ve-

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

From: **Justice Rehnquist**

Circulated: JAN 31 1984

Recirculated: _____

P. 7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[January ——, 1984]

PER CURIAM.

We granted certiorari to the Supreme Court of Wisconsin to decide whether a warrantless home arrest for drunk driving, based on probable cause and given allegedly exigent circumstances, violates the Fourth Amendment. After full briefing and oral argument, however, it appears that while the question may technically be presented by the record, it is presented, at best, in a highly atypical and totally abstract way. We therefore dismiss the writ of certiorari as improvidently granted. Resolution of this admittedly important question, see *Payton* v. *New York*, 445 U. S. 573, 583 (1980), "can await a day when the issue is posed less abstractly." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U. S. 180, 184 (1959).

On the night of April 24, 1978, petitioner Welsh drove his car off the road, narrowly averting an accident. He emerged from the car in an obviously inebriated state and asked another motorist for a ride home. Told that he should wait for assistance, petitioner left the scene on foot. The police arrived almost immediately and, after running a license check and taking the other driver's statement, proceeded to Welsh's home a short distance away. The police were admitted by petitioner's stepdaugther who told them that petitioner "just stumbled in" and was upstairs. Petitioner's wife led them up to his room, where they found him in bed. Welsh was arrested and charged with operating a motor ve-

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

From: **Justice Rehnquist**

Circulated: ~~FEB 3 1984~~ FEB 3 1984

Recirculated: _____

Pp 6+7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[February ——, 1984]

PER CURIAM.

We granted certiorari to the Supreme Court of Wisconsin to decide whether a warrantless home arrest for drunk driving, based on probable cause and given allegedly exigent circumstances, violates the Fourth Amendment. After full briefing and oral argument, however, it appears that while the question may technically be presented by the record, it is presented, at best, in a highly atypical and totally abstract way. We therefore dismiss the writ of certiorari as improvidently granted. Resolution of this admittedly important question, see *Payton* v. *New York*, 445 U. S. 573, 583 (1980), "can await a day when the issue is posed less abstractly." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U. S. 180, 184 (1959).

On the night of April 24, 1978, petitioner Welsh drove his car off the road, narrowly averting an accident. He emerged from the car in an obviously inebriated state and asked another motorist for a ride home. Told that he should wait for assistance, petitioner left the scene on foot. The police arrived almost immediately and, after running a license check and taking the other driver's statement, proceeded to Welsh's home a short distance away. The police were admitted by petitioner's stepdaugther who told them that petitioner "just stumbled in" and was upstairs. Petitioner's wife led them up to his room, where they found him in bed. Welsh was arrested and charged with operating a motor ve-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 27, 1984

Re: No. 82-5466 Welsh v. Wisconsin

Dear Chief,

In view of the fact that the Per Curiam opinion which I drafted has not commanded majority support, I think the opinion should be reassigned to someone who believes the merits should be reached and the judgment of the Supreme Court of Wisconsin reversed.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 4, 1984

Re: No. 82-5466 Welsh v. Wisconsin

Dear Byron:

Please join me in your dissent.

Sincerely,

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 19, 1983

Re: 82-5466 - Welsh v. Wisconsin

Dear Chief:

I shall await Bill Brennan's dissent, and possibly add a few words of my own.

Respectfully,

JPS

The Chief Justice

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: DEC 14 '83

Recirculated: _____

82-5466 - Welsh v. Wisconsin

JUSTICE STEVENS, dissenting.

The analysis in Part II-A of JUSTICE BRENNAN's dissenting opinion is certainly persuasive; moreover, I am inclined to believe that JUSTICE BRENNAN is correct in concluding that "the Fourth Amendment imposes an absolute ban on warrantless home arrests for certain minor offenses." Ante, at 8. Nevertheless, in my view it is unnecessary to decide that question in this case. The reasoning in the remainder of the opinion, to which I subscribe, provides a sufficient basis for reversing the judgment of the Supreme Court of Wisconsin, and the summary in Part III of his opinion is surely correct. Accordingly, I join in all but Part II-A of JUSTICE BRENNAN's opinion, and I respectfully dissent from the Court's disposition of this case.

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

From: **Justice Stevens**

Circulated: _____

Recirculated: DEC 20 '83

Reinted

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[December ——, 1983]

JUSTICE STEVENS, dissenting.

The analysis in Part II–A of JUSTICE BRENNAN's dissenting opinion is certainly persuasive; moreover, I am inclined to believe that JUSTICE BRENNAN is correct in concluding that "the Fourth Amendment imposes an absolute ban on warrantless home arrests for certain minor offenses." *Ante*, at 8. Nevertheless, in my view it is unnecessary to decide that question in this case. The reasoning in the remainder of the opinion, to which I subscribe, provides a sufficient basis for reversing the judgment of the Supreme Court of Wisconsin, and the summary in Part III of his opinion is surely correct. Accordingly, I join in all but Part II–A of JUSTICE BRENNAN's opinion, and I respectfully dissent from the Court's disposition of this case.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1984

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill:

In order to forestall any possible misunderstanding, I would like to reserve the right to take a somewhat different approach to the Rule of Four issue discussed in part III of your circulating dissent. I have not yet written anything on this subject because, as I suggested at conference today, I find it hard to believe that the majority will actually dismiss the case as improvidently granted after it has been argued and over the dissent of the four members of the Court who voted to grant. As I think we all agreed at conference today, that has never happened while any present member of the Court has been on the Court. At least, that's my impression of the discussion.

As you know, I think reasonable judges can differ concerning the wisdom of the Rule of Four, but if it is to continue as a part of our routine procedures, I surely think that it should be administered in a uniform fashion.

Respectfully,

JPS

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

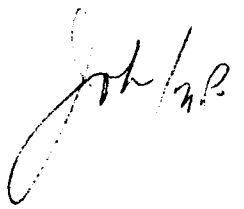
February 8, 1984

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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: _____

Recirculated: FEB 10 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[February ——, 1984]

JUSTICE STEVENS, dissenting.

The analysis in Part II–A of JUSTICE BRENNAN's dissenting opinion is certainly persuasive; moreover, I am inclined to believe that JUSTICE BRENNAN is correct in concluding that "the Fourth Amendment imposes an absolute ban on warrantless home arrests for certain minor offenses." *Ante*, at 10. Nevertheless, in my view it is unnecessary to decide that question in this case. The reasoning in the remainder of the opinion, to which I subscribe, provides a sufficient basis for vacating the judgment of the Supreme Court of Wisconsin, and the summary in Part III of his opinion is surely correct. Accordingly, I join in all but Part II–A of JUSTICE BRENNAN's opinion, and I respectfully dissent from the Court's disposition of this case.

stylistic changes

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

From: **Justice Stevens**

Circulated: _____

Recirculated: FEB 14 1984

3d DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-5466

EDWARD G. WELSH, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[February ——, 1984]

JUSTICE STEVENS, dissenting.

The analysis in Part II-A of JUSTICE BRENNAN's dissenting opinion is certainly persuasive; moreover, I am inclined to believe that JUSTICE BRENNAN is correct in concluding that "the Fourth Amendment imposes an absolute ban on warrantless home arrests for certain minor offenses." *Ante*, at 10. Nevertheless, in my view it is unnecessary to decide that question in this case. The reasoning in the remainder of the opinion, to which I subscribe, provides a sufficient basis for vacating the judgment of the Supreme Court of Wisconsin. The summary in Part III of his opinion is surely correct. Accordingly, I join in all but Part II-A of JUSTICE BRENNAN's opinion, and I respectfully dissent from the Court's disposition of this case.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 6, 1984 84 MAR -6 A10:38

Re: 82-5466 - Welsh v. Wisconsin

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

(1)

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 19, 1983

No. 82-5466 Welsh v. Wisconsin

Dear Chief,

I agree with the per curiam.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 27, 1984

No. 82-5466 Welsh v. Wisconsin

Dear Bill,

I agree with your Per Curiam.

Sincerely,

Sandra

Justice Rhenquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 12, 1984

No. 82-5466 Welsh v. Wisconsin

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference