

The Burger Court Opinion Writing Database

Massachusetts v. Sheppard

468 U.S. 981 (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

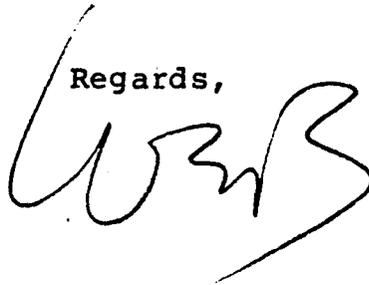
March 13, 1984

Re: 82-963 - Massachusetts v. Sheppard, Osborne

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

RECEIVED
SUPREME COURT
JUSTICE

'84 MAR 13 P2:53

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

SUPREME
COURT

January 23, 1984

'84 JAN 23 A11:12

No. 82-963

Massachusetts v. Sheppard

Dear Thurgood and John,

We three are in dissent on the good
faith issue in the above. I'll
undertake a dissent.

Sincerely,



Justice Marshall

Justice Stevens

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

From: **Justice Brennan**

Circulated: JUL 2 1984

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*W/A
Done from me on
1/21/84
JWB*

Printed
1st DRAFT
^

SUPREME COURT OF THE UNITED STATES

Nos. 82-963 AND 82-1771

82-963
MASSACHUSETTS, PETITIONER
v.
OSBORNE SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

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 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

¹See, 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 (1978) (BRENNAN, J., dissenting); *United States v. Havens*, 446 U. S. 620, 629 (1980) (BRENNAN, J., dissenting).

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

From: Justice White

Circulated: FEB 23 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-963

MASSACHUSETTS, PETITIONER *v.*
OSBORNE SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[February —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case involves the application of the rules articulated today in *United States v. Leon, ante*, to a situation in which police officers seize items pursuant to a warrant subsequently invalidated because of a technical error on the part of the issuing judge.

I

The badly burned body of Sandra Boulware was discovered in a vacant lot in the Roxbury section of Boston at approximately 5 a. m., Saturday, May 5, 1979. An autopsy revealed that Boulware had died of multiple compound skull fractures caused by blows to the head. After a brief investigation, the police decided to question one of the victim's boyfriends, Osborne Sheppard. Sheppard told the police that he had last seen the victim on Tuesday night and that he had been at a local gaming house (where cards games were played) from 9 p. m. Friday until 5 a. m. Saturday. He identified several people who would be willing to substantiate the latter claim.

By interviewing the people Sheppard had said were at the gaming house on Friday night, the police learned that although Sheppard was at the gaming house that night, he had borrowed an automobile at about 3 a. m. Saturday morning in order to give two men a ride home. Even though the trip normally took only fifteen minutes, Sheppard did not return with the car until nearly 5 a. m.

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



CHAMBERS OF
JUSTICE BYRON R. WHITE

February 28, 1984

Re: 82-963 - Massachusetts v. Sheppard

Dear Lewis,

I am making changes in the circulating opinion which I hope will meet your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Byron", is written below the word "Sincerely,".

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**

Stylistic and pp. 5-7

Circulated: _____

Recirculated: FEB 28 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-963

MASSACHUSETTS, PETITIONER *v.*
OSBORNE SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

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

From: Justice White

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-963

MASSACHUSETTS, PETITIONER *v.*
OSBORNE SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

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111

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

July 2, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Massachusetts v. Sheppard, No. 82-963

(1) Pennsylvania v. Santner, No. 83-70

Based on information that resp, a doctor, was dispensing drugs outside the course of his professional practice, police obtained a search warrant authorizing them to search resp's office and to seize "All Patient/Physician records and charts. All ledgers and bookkeeping pertaining to patient visits." Resp's pre-trial motion to suppress the items seized during the search was denied, and petr was convicted.

On appeal, the Superior Court of Pa. ordered a new trial, holding that the suppression motion should have been granted. The court stated that a warrant is overbroad if it is broader than can be justified by the probable cause on which the warrant is based and noted that the affidavit filed in support of the warrant in this case contained information about two discrete time periods and the identities of a number of people with whom illicit transactions had allegedly occurred. The court therefore concluded that the warrant was overbroad under the Fourth Amendment. In a footnote, the court stated that, while the particularity requirement of the state constitution was slightly different from that of the federal constitution, "it affords at least as much protection." The Pa. S. Ct. refused to review the ruling.

✓ Petr argues that the warrant was sufficiently particular, that the lower court should have "redacted" those items which were improperly seized from those which were properly seized, and that the police acted in good faith reliance upon a duly issued search warrant. Petr admits, however, that it did not raise the good faith issue as part of its Fourth Amendment argument in the state court.

✓ Despite petr's failure to raise the good-faith issue as part of its opposition to excluding the evidence, I would vote to GVR in light of Massachusetts v. Sheppard and United States v. Leon. There may be a fair argument to the contrary under Illinois v. Gates, 51 U.S.L.W. 4709, 4710-12. If the case is remanded, the state court can decide whether the officers acted in good faith and whether the evidence should be excluded under state law in these circumstances.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 7, 1984

Re: No. 82-963-Massachusetts v. Sheppard

Dear Byron:

I await further writing.

Sincerely,

T.M.

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

July 3, 1984

Re: No. 82-963 - Massachusetts v. Sheppard
No. 82-1771 - United States v. Leon

Dear Bill:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 13, 1984

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SUPREME COURT
JUSTICE HARRY A. BLACKMUN

'84 MAR 13 P2:12

Re: No. 82-963, Massachusetts v. Sheppard

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,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 25, 1984

82-963 Massachusetts v. Sheppard

Dear Byron:

My only suggestion in Sheppard is that you make somewhat clearer the fact that the standard we approve requires "objectively reasonable belief" on the part of the officer.

You do mention "objectively reasonable basis" on p. 6, but do not qualify the word "reasonably" in the same way either on page 5 or in the "holding" paragraph on p. 7.

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

82-963 Massachusetts v. Sheppard

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 28, 1984

Re: No. 82-963 Massachusetts v. Sheppard

Dear Byron:

Please join me.

Sincerely,

WW

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 1, 1984

Re: 82-963 - Massachusetts v. Sheppard
82-1771 - United States v. Leon

Dear Byron:

In these two cases I plan to write out a short opinion concurring in the judgment in Sheppard and dissenting in Leon, but I may end up simply joining what Bill Brennan writes.

Respectfully,



Justice White

Copies to the Conference

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

From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-963 AND 82-1771

MASSACHUSETTS, PETITIONER
No. 82-963
v.
SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

UNITED STATES, PETITIONER
No. 82-1771
v.
ALBERTO ANTONIO LEON ET AL.

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

[March —, 1984]

JUSTICE STEVENS, concurring in the judgment in No. 82-963 and dissenting in No. 82-1771.

It is appropriate to begin with the plain language of the Fourth Amendment:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Court assumes that the searches in these cases violated the Fourth Amendment, yet refuses to apply the exclusionary rule because the Court concludes that it was “reasonable” for the police to conduct them. In my opinion an official search and seizure cannot be both “unreasonable” and “reasonable” at the same time. The doctrinal vice in the

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

30. 6, 8, 12, 19

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-963 AND 82-1771

MASSACHUSETTS, PETITIONER
No. 82-963 *v.*
SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

UNITED STATES, PETITIONER
No. 82-1771 *v.*
ALBERTO ANTONIO LEON ET AL.

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7. 20

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

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-963 AND 82-1771

MASSACHUSETTS, PETITIONER
No. 82-963 *v.*
SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
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FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

18, 19, 20

From: Justice Stevens

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JUSTICE MARSHALL

'84 MAY 30 P 3:20

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-963 AND 82-1771

MASSACHUSETTS, PETITIONER
No. 82-963
v.
SHEPPARD

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

UNITED STATES, PETITIONER
No. 82-1771
v.
ALBERTO ANTONIO LEON ET AL.

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

[March —, 1984]

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 15, 1984

No. 82-963 Massachusetts v. Sheppard

Dear Byron,

Please join me.

Sincerely,

Justice White

Copies to the Conference