

The Burger Court Opinion Writing Database

Waller v. Georgia

467 U.S. 39 (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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1984

84 MAY 17 09:28

Re: 83-321) Guy Waller v. Georgia/Clarence Cole, et al.
83-322) v. Georgia

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 8, 1984

No. 83-321) Waller v. Georgia
)
No. 83-322) Cole, et al. v. Georgia

Dear Lewis,

I agree.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1984

Re: 83-321 and 83-322 -
Waller v. Georgia and Cole v. Georgia

Dear Lewis,

Join me, please.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 16, 1984

Re: Nos. 83-321 and 322 - Waller and Cole v. Georgia

Dear Lewis:

Please join me.

Sincerely,



T.M.

Justice Powell

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

'84 MAY 14 10:05

May 14, 1984

Re: No. 83-321) - Waller v. Georgia
No. 83-322) - Cole v. Georgia

Dear Lewis:

Please join me..

Sincerely,



Justice Powell

cc: The Conference

05/07

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY -8 A9:43

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

From: Justice Powell

Circulated: 5/8/84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-321 AND 83-322

83-321 GUY WALLER, PETITIONER
v.
GEORGIA

83-322 CLARENCE COLE ET AL., PETITIONER
v.
GEORGIA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF GEORGIA

[May —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide the extent to which a hearing on a motion to suppress evidence may be closed to the public over the objection of the defendant consistently with the Sixth and Fourteenth Amendment right to a public trial.

I

Acting under court authorization, Georgia police placed wiretaps on a number of phones during the last six months of 1981. The taps revealed a large lottery operation involved in gambling on the volume of stocks and bonds traded on the New York Stock Exchange. In early January 1982, law enforcement officers simultaneously executed search warrants at numerous locations, including the homes of petitioners. Petitioners and 35 others were indicted and charged with violating the Georgia Racketeer Influenced and Corrupt Organizations Act ("Georgia RICO"), Ga. Code Ann. §§ 16-14-1 to 16-14-15 (1982, and Supp. 1983), and with commercial gambling and communicating gambling information in violation of Ga. Code Ann. §§ 16-12-22 and 16-12-28 (1982).

Reproduced from the Collections of the Manuscript Division, Library of Congress

05/10

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

CHANGES ON
p. 5, 10, 11

LFP
Blair Jones
M

From: Justice Powell

Circulated: _____

Recirculated: _____

MAY 11 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-321 AND 83-322

83-321
GUY WALLER, PETITIONER
v.
GEORGIA

83-322
CLARENCE COLE ET AL., PETITIONER
v.
GEORGIA

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF GEORGIA

[May —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide the extent to which a hearing on a motion to suppress evidence may be closed to the public over the objection of the defendant consistently with the Sixth and Fourteenth Amendment right to a public trial.

I

Acting under court authorization, Georgia police placed wiretaps on a number of phones during the last six months of 1981. The taps revealed a large lottery operation involved in gambling on the volume of stocks and bonds traded on the New York Stock Exchange. In early January 1982, law enforcement officers simultaneously executed search warrants at numerous locations, including the homes of petitioners. Petitioners and 35 others were indicted and charged with violating the Georgia Racketeer Influenced and Corrupt Organizations Act ("Georgia RICO"), Ga. Code Ann. §§ 16-14-1 to 16-14-15 (1982, and Supp. 1983), and with commercial gambling and communicating gambling information in violation of Ga. Code Ann. §§ 16-12-22 and 16-12-28 (1982).

Join

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 30, 1984

MEMORANDUM TO THE CONFERENCE

83-1463 Ledesma v. Georgia
83-1578 Merritt v. Georgia

These curve-lined cases are the only "holds" for 83-321
Waller v. Georgia.

Petitioners in these cases assert that Ga. Code Ann. §16-14-7(f), which authorizes seizure of property subject to forfeiture under the Georgia RICO statute, is facially unconstitutional.

This question was raised in Waller, but the Court did not reach it because the petitioners there had not shown they had standing to challenge the statute. The same appears to be true here: these were not RICO prosecutions, and it appears that no evidence was seized pursuant to §16-14-7(f). In any case, our opinion in Waller does not affect these cases, and none of the other questions raised is cert-worthy. I will vote to deny.

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

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1984

Re: Nos. 83-321 & 83-322 Waller v. Georgia

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 8, 1984

Re: 83-321 - Waller v. Georgia
83-322 - Cole v. Georgia

Dear Lewis:

Although I have joined you unconditionally, I do have two suggestions for your consideration.

In the portion of footnote 3 that runs over onto page 5, you have a sentence relating to the evidence about the police hurrying because a storm was approaching. This sentence suggests to me that you are relying on a sort of exigent circumstances rationale. Of course, no finding concerning the storm or the presence of exigent circumstances was made below. It seems to me that the remainder of the footnote is a perfectly adequate justification for your disposition of this contention and does not rest on the presence of exigent circumstances. I wonder, therefore, if the opinion might not be stronger if you simply omitted that sentence.

In the last section of the opinion you indicate that there should be no new trial unless the new suppression hearing results in the suppression of additional evidence. I should think it at least possible that a new suppression hearing might generate publicity which would bring forth an alibi witness or some other evidence favorable to the defense on the merits. I recognize that this is quite unlikely, but at least it is a theoretical possible benefit of a public hearing that the defendant did not receive the first time around. I wonder, therefore, if you should not leave open the possibility that a new trial might be justified if either (1) additional evidence is suppressed, or (2) the hearing resulted in the development of new evidence tending to buttress the defense on the

✓
Joe has suggested making these changes.
See his memo. I will take a close look.

merits. If you do not want to make a suggestion this concrete, perhaps you could just consider making the sentence a little less categorical by inserting a word such as "presumably" in the last sentence of the paragraph that runs over onto page 10 and also the one that runs over onto page 11.

Respectfully,

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

Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

24 MAY -9 A9 5

May 8, 1984

Re: 83-321 - Waller v. Georgia
83-322 - Cole v. Georgia

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 8, 1984

No. 83-321 Waller v. Georgia
No. 83-322 Cole v. Georgia

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

2758
MAY-9 63:53