

The Burger Court Opinion Writing Database

Berkemer v. McCarty

468 U.S. 420 (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

May 31, 1984

Re: 83-710 - Berkemer v. McCarty

Dear Thurgood:

My recollection is - and my notes confirm - that the Conference agreed that we would use this case to define when "custody attaches" so as to invoke Miranda. I believe the Court of Appeals concluded that respondent was not in custody until he was taken into the police car; hence Miranda was not triggered until the latter custody began. The Court of Appeals stated that "'on-the scene questioning,' preserved by the Miranda Court, is likewise preserved today." 716 F. 2d, at 364.

Applying this principle to the facts of this case, that court concluded that "[a]t the point that Trooper Williams took McCarty to the police station, his 'freedom of action [was] curtailed in [a] significant way.'"

I agree fully with that conclusion and thought we had voted to hold that a person is not in custody during a Terry-type stop of a motorist.

I am unable to join an opinion in this case unless it reflects that a "car stop" does not invoke Miranda.

Regards,

WJ

Justice Marshall

Copies to the Conference

P.S. My cert notes indicate that the reason we granted was to deal with the "car stop" issue, not the station house issue

WJ

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

CHAMBERS OF
THE CHIEF JUSTICE

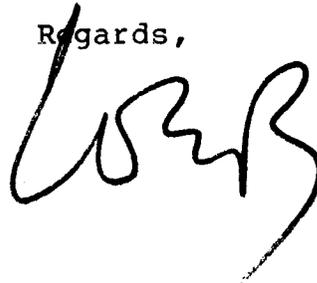
June 21, 1984

RE: 83-710 - Berkemer v. McCarthy

Dear Thurgood:

I join your revised draft.

Regards,



Justice Marshall

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

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SUPREME COURT
JUSTICE MARSHALL

24 JUN -4

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

13

June 4, 1984

No. 83-710

Berkemer v. McCarty

Dear Thurgood,

I agree.

Sincerely,

Bill

Justice Marshall

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4

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

84 JUN 20 P2:06

June 20, 1984

No. 83-710

Berkemer v. McCarty

Dear Thurgood,

I am still with you.

Sincerely,

Bill

Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -5 P2:02

Re: 83-710 - Berkemer v. McCarty

Dear Thurgood,

In my view, as I stated in conference, Miranda warnings in this case were not necessary until the arrest. Hence, I cannot join all of your opinion and will await your reaction to the comments of the Chief Justice, Justice Rehnquist and Justice O'Connor.

Also, I would not deal with the harmless-error argument at all. Petitioner did not raise it below, and we need not react to it.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm



CHAMBERS OF
JUSTICE BYRON R. WHITE

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

84 JUN 19 P2:48

June 19, 1984

Re: 83-710 - Berkemer v. McCarthy

Dear Thurgood,

Please join me.

Sincerely yours,

Justice Marshall

Copies to the Conference

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

From: Justice Marshall

Circulated: MAY 30 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-710

HARRY J. BERKEMER, SHERIFF OF FRANKLIN
COUNTY, OHIO, PETITIONER *v.*
RICHARD N. McCARTY

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

[May —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether the admissibility of statements made during custodial interrogation by a suspect arrested for a misdemeanor traffic offense is governed by our decision in *Miranda v. Arizona*, 384 U. S. 436 (1966).

I

A

The parties have stipulated to the essential facts. See App. to Pet. for Cert. A-1. On the evening of March 31, 1980, Trooper Williams of the Ohio State Highway Patrol observed respondent's car weaving in and out of a lane on Interstate Highway 270. After following the car for two miles, Williams forced respondent to stop and asked him to get out of the vehicle. When respondent complied, Williams noticed that he was having difficulty standing.¹ Williams then

¹The parties stipulated that, after watching respondent get out of the car, "Trooper Williams concluded that [respondent] would be charged with a traffic offense and, therefore, his freedom to leave the scene was terminated." App. to Pet. for Cert. A-2. The apparent purpose of this stipulation was to establish the time at which respondent was taken into custody. The Court of Appeals repudiated this implication of the parties' agreement, on the ground that it was founded on an unacceptable "subjective standard" for ascertaining the commencement of custody. *McCarty v. Herdman*, 716 F. 2d 361, 362, n. 1 (CA6 1983). For reasons that will

substantial changes throughout

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

From: Justice Marshall

Circulated: _____

Recirculated: JUN 18 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-710

HARRY J. BERKEMER, SHERIFF OF FRANKLIN
COUNTY, OHIO, PETITIONER *v.*
RICHARD N. McCARTY

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

[June —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents two related questions: First, does our decision in *Miranda v. Arizona*, 384 U. S. 436 (1966), govern the admissibility of statements made during custodial interrogation by a suspect accused of a misdemeanor traffic offense? Second, does the roadside questioning of a motorist detained pursuant to a traffic stop constitute custodial interrogation for the purposes of the doctrine enunciated in *Miranda*?

I

A

The parties have stipulated to the essential facts. See App. to Pet. for Cert. A-1. On the evening of March 31, 1980, Trooper Williams of the Ohio State Highway Patrol observed respondent's car weaving in and out of a lane on Interstate Highway 270. After following the car for two miles, Williams forced respondent to stop and asked him to get out of the vehicle. When respondent complied, Williams noticed that he was having difficulty standing. At that point, "Williams concluded that [respondent] would be charged with a traffic offense and, therefore, his freedom to leave the scene was terminated." *Id.*, at A-2. However, respondent was not told that he would be taken into custody. Williams then

change n. 30
STYLISTIC CHANGES THROUGHOUT.

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

From: Justice Marshall

Circulated: _____

Recirculated: JUN 27 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-710

HARRY J. BERKEMER, SHERIFF OF FRANKLIN
COUNTY, OHIO, PETITIONER *v.*
RICHARD N. McCARTY

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

[June —, 1984]

JUSTICE MARSHALL delivered the opinion of the Court.

This case presents two related questions: First, does our decision in *Miranda v. Arizona*, 384 U. S. 436 (1966), govern the admissibility of statements made during custodial interrogation by a suspect accused of a misdemeanor traffic offense? Second, does the roadside questioning of a motorist detained pursuant to a traffic stop constitute custodial interrogation for the purposes of the doctrine enunciated in *Miranda*?

I

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 27, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 83-710, Berkemer v. McCarty

No. 82-315, Oregon v. Roberti

A police officer observed respondent's car weaving in and out of a highway lane at a speed of approximately 80 mph. After the officer forced respondent to stop, respondent voluntarily got out of his car and walked toward the police car. When the officer told respondent what the officer had observed, respondent admitted that he had been driving too fast and that he had recently had three drinks. Respondent then failed to perform satisfactorily a field sobriety test. At that juncture, the officer decided that he would arrest respondent, but did not tell respondent of his intention. When the officer asked respondent to rate his degree of intoxication on a scale of 1 to 10, respondent replied that he was a "low five." The officer then placed respondent under arrest and read him his Miranda rights.

After the Oregon trial court denied respondent's motion to exclude his self-description as a "low five," respondent was convicted of driving while under the influence of intoxicants. The Oregon Court of Appeals reversed, holding that admission of the statement in question violated the Fifth Amendment. The Oregon Supreme Court granted certiorari, and initially reversed the Court of Appeals, holding (by a vote of 4-3) that respondent was not in custody at the time the crucial statement was made. On rehearing, however, the Supreme Court reversed itself, this time holding (by a vote of 4-3) that respondent should have been informed of his rights as soon as the officer formed an intention to take respondent into custody.

The decision below conflicts in two respects with our decision in Berkemer v. McCarty. First, we hold in Berkemer that an ordinary traffic stop does not, by itself, render the detained motorist "in custody" for Miranda purposes. In this case, neither the duration of the roadside detention nor the treatment to which respondent was subjected prior to his formal arrest indicated that anything other than a routine traffic stop was involved. Second, the court's focus on the officer's subjective intent is inconsistent with our reaffirmation, in Berkemer, of the principle that the crucial factor in determining whether a suspect is in custody is how a reasonable man in the suspect's place would have understood his situation.

For these reasons, I will vote to GVR. *OK*

JM

6

Supreme Court of the United States
Washington, D. C. RECEIVED
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JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

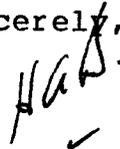
84 JUN 21 A9 56 June 21, 1984

Re: No. 83-710, Berkemer v. McCarty

Dear Thurgood,

Please join me in your circulation of June 18.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1984

83-710 Berkemer v. McCarthy

Dear Thurgood:

I also thought the principal reason for granting this case was to consider whether Miranda warnings were required when a motorist is stopped for a traffic violation.

My notes indicate that a substantial majority of the Court analogized such a stop to Terry, and thought we should hold that Miranda is not applicable unless and until the motorist clearly is in custody.

Once in custody, I fully agree with your view. In short, there are two issues and I had understood that we had voted to decide both.

Sincerely,



Justice Marshall

lfp/ss



CHAMBERS OF
JUSTICE LEWIS. F. POWELL, JR.

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

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 20 P2:06

June 20, 1984

83-710 Berkemer v. McCarty

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1984

Re: No. 83-710 Berkemer v. McCarty

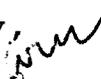
Dear Thurgood:

My recollection of the Conference discussion in this case pretty much dovetails with that of the Chief, as expressed in his letter to you today. I realize that the Conference was not unanimous on the point, but I think a majority did decide to address the "Terry stop" situation presented by brief detention following a traffic arrest.

I also think there is some inconsistency between footnote 21 in your opinion, which reserves the question "whether or when a routine traffic stop results in sufficient curtailment of the motorist's freedom of movement to require that he be informed of his constitutional rights" with the following language from California v. Beheler, 103 S.Ct. 3517, 3519-3520 (1983):

"Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest. Mathiason, supra, 429 U.S., at 495."

Sincerely,



Justice Marshall

cc: The Conference

3

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 20 P3:34

June 20, 1984

Re: No. 83-710 Berkemer v. McCarty

Dear Thurgood:

Please join me.

Sincerely,

Wm

Justice Marshall

cc: The Conference



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1984

Re: 83-710 - Berkemer v. McCarty

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

83-710 1E 11 AS

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

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 18 P1:07

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 18, 1984

Re: 83-710 - Berkemer v. McCarty

Dear Thurgood:

It seems to me that the first draft that you circulated properly decided all of the questions that were fairly presented by this case. Although I will study the prearrest situation more closely before coming to rest, I am presently inclined to the view that a good deal of what you say is in the advisory category and not necessary for the disposition of this case. Accordingly, for the time being at least, do not count me among those who have joined your opinion.

Respectfully,



Justice Marshall

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SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 21 AM 12:24

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

From: Justice Stevens

Circulated: JUN 21

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-710

HARRY J. BERKEMER, SHERIFF OF FRANKLIN
COUNTY, OHIO, PETITIONER *v.*
RICHARD N. McCARTY

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

[June —, 1984]

JUSTICE STEVENS, concurring in part and concurring in
the judgment.

The only question presented by the petition for certiorari
reads as follows:

“Whether law enforcement officers must give ‘*Miranda*
warnings’ to individuals arrested for misdemeanor traffic
offenses.”

In Parts I, II and IV of its opinion, the Court answers that
question in the affirmative and explains why that answer re-
quires that the judgment of the Court of Appeals be affirmed.
Part III of the Court’s opinion is written for the purpose of
discussing the admissibility of statements made by respond-
ent “prior to his formal arrest”, see *ante*, at 13. That discus-
sion is not necessary to the disposition of the case, nor neces-
sary to answer the only question presented by the certiorari
petition. Indeed, the Court of Appeals quite properly did
not pass on the question answered in Part III since it was en-
tirely unnecessary to the judgment in this case. It thus
wisely followed the cardinal rule that a court should not pass
on a constitutional question in advance of the necessity of de-
ciding it. See, *e. g.*, *Ashwander v. Tennessee Valley Au-*
thority, 297 U. S. 288, 346 (1936) (Brandeis, J., concurring).

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

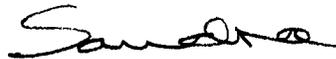
May 31, 1984

No. 83-710 Berkemer v. McCarty

Dear Thurgood,

I agree with the memoranda already sent to you by the Chief and Bill Rehnquist. It was my understanding that a majority had agreed the opinion should reflect that McCarty was not in custody until he was taken to the police station. The standards, as I understand them, are reflected in California v. Beheler, 103 S.Ct. 3517, 3519-3520 (1983).

Sincerely,



Justice Marshall

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12

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

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JUSTICE MARSHALL

24 JUN 19 11:30

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 19, 1984

Re: No. 83-710 Berkemer v. McCarty

Dear Thurgood,

Please join me in your second draft in this case.

Sincerely,



Justice Marshall

Copies to the Conference