

The Burger Court Opinion Writing Database

United States v. Johns

469 U.S. 478 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



5
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 27, 1984

Re: No. 83-1625 - United States v. Lyle Gerald Johns

Dear Sandra,

I join.

Regards,

W.E. B

Justice O'Connor

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

CHAMBERS OF
THE CHIEF JUSTICE

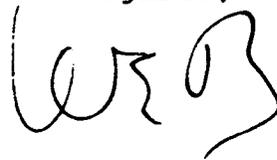
January 8, 1985

RE: 83-1625 - United States v. Johns, et al.

Dear Sandra:

I have no objections to your revisions.

Regards,



Justice O'Connor

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ON: 01/08 9-11/85

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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: DEC 28 1984

Recirculated:

WJB
Please join me
in your
dissent
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1625

UNITED STATES, PETITIONER *v.* LYLE GERALD
JOHNS ET AL.

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

[January —, 1985]

JUSTICE BRENNAN, dissenting.

Consistently with my disagreement with the Court in *Ross v. United States*, 458 U. S. 798 (1982); see *Id.*, at 827 (MARSHALL, J., joined by BRENNAN, J., dissenting), I dissent from today's unwarranted extension of *Ross*. As a general rule the Fourth Amendment proscribes the warrantless search of closed packages and containers. *United States v. Chadwick*, 433 U. S. 1, 10-11 (1977). Even when the authorities have probable cause to believe that a container holds contraband or evidence of a crime, the Fourth Amendment generally permits no more than "seizure of the property, pending issuance of a warrant to examine its contents, if the exigencies of the situation demand it . . ." *United States v. Place*, — U. S. —, — (1983). That a closed package is located within an automobile provides no reason for departing from the general rule that no more than seizure pending issuance of a warrant is constitutionally permissible. *Ross, supra*, at 830 (MARSHALL, J., dissenting) ("the traditional rationales for the automobile exception plainly do not support extending it to the search of a container found inside a vehicle"). *A fortiori* a warrantless search occurring three days after seizure of a package found in an automobile violates the Fourth Amendment.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 26, 1984

Re: 83-1625 - United States v. Johns

Dear Sandra,

Please join me.

Sincerely yours,

Justice O'Connor

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 2, 1985

Re: No. 83-1625-U.S. v. Johns

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
TM.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1984

Re: No. 83-1625, United States v. Johns

Dear Sandra:

I wonder if you would favor me in one respect, and that is to eliminate the third sentence in Part II on page 3. This phrase, which seems to me to have an element of pomposity, appears every year with a new generation of clerks. It appeared in an opinion from another chambers and has now been eliminated there.

Sincerely,



Justice O'Connor

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1984

Re: No. 83-1625, United States v. Johns

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

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AS 85 03 121

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 4, 1985

Re: No. 83-1625 - United States v. Johns

Dear Sandra:

I am still with you.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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December 20, 1984

83-1625 United States v. Johns

Dear Sanda:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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87
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 2, 1985

Re: No. 83-1625 United States v. Johns

Dear Sandra,

Please join me.

Sincerely,
Wm

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 7, 1985

Re: No. 83-1625 United States v. Johns

Dear Sandra,

I will go along with your revision circulated January 4th.

Sincerely,

Wm

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 2, 1985

Re: 83-1625 - United States v. Johns

Dear Sandra:

Although I agree with the first six and one-half pages and the last paragraph of your opinion, I have a good deal of difficulty with the language that begins on the lower part of page 7. Two points, in particular, trouble me.

First, you suggest that the privacy interest in the contents of a container in a vehicle are "extinguished" when an officer has probable cause to justify a vehicle search (page 8). In ROSS, we said that the expectation of privacy "may not survive," but that merely means that the search will effectively terminate any privacy in that which is searched. I don't believe it is accurate to say that the facts justifying a search ipso facto extinguished the privacy interest before the search actually takes place.

Second, you state that the Carroll exception determines the legality of "the timing" of a warrantless search of the container. I don't believe that either Carroll or Ross sheds much, if any, light on the timing question, because no issue related to time was raised in either of those cases. I would suggest that the correct analysis should encompass these two steps: (1) Carroll and Ross teach us that the officers were entitled to search the vehicle and its contents, including the bags of marijuana. The scope of the search was proper--just as if the officers had a warrant to search the vehicle and its content. (2) If the owner of the vehicle or its contents want to claim that the conduct of the search was unreasonable because it was not completed as promptly as it might have been, they should have the burden of proving that the delay adversely and unreasonably affected some privacy or possessory interest that they can identify. They did not offer any evidence, or even any argument,

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supporting any such claim. Indeed, they did not even try to establish when the packages were actually opened.

This approach would make the question of timing depend on the kind of showing that the target of the search could make in each case. In a case like this, I see no reason why the police should be under any duty to open the bags until the trial date arrives. But if a locked briefcase had been seized, and if its owner had requested its prompt return because it contained important papers, for example, the police might well have had a duty to conduct their search expeditiously.

If you think there is merit in this approach, perhaps you could substitute it for the three paragraphs that trouble me. If you prefer the analysis in the circulating draft, I will write a brief concurrence.

Respectfully,



Justice O'Connor

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 4, 1985

Re: 83-1625 - United States v. Johns

Dear Sandra:

Confirming our telephone conversation, I think the revisions that you have just circulated substantially strengthen your opinion. On the assumption that those who have already joined you will have no objection to the changes, please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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1 pp. 3

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: DEC 19 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1625

UNITED STATES, PETITIONER *v.* LYLE GERALD
JOHNS ET AL.

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

[December —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *United States v. Ross*, 458 U. S. 798 (1982), the Court held that if police officers have probable cause to search a lawfully stopped vehicle, they may conduct a warrantless search of any containers found inside that may contain the object of the search. The issue in the present case is whether *Ross* authorizes a warrantless search of packages several days after they were removed from vehicles that police officers had probable cause to believe contained contraband. Although the Court of Appeals for the Ninth Circuit acknowledged that under *Ross* the police officers could have searched the packages when they were first discovered in the vehicles, the court concluded that the delay after the initial seizure made the subsequent warrantless search unreasonable within the meaning of the Fourth Amendment. 707 F. 2d 1093 (1983). We granted certiorari, — U. S. — (1984), and we now reverse.

I

Pursuant to an investigation of a suspected drug smuggling operation, a United States Customs officer went to respondent Duarte's residence in Tucson, Az., where he saw two pickup trucks. The Customs officer observed the trucks drive away, and he contacted other officers who conducted ground and air surveillance of the trucks as they traveled 100

handwritten notes: "want to discuss this"

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1985

No. 83-1625 United States v. Johns

Dear John,

You have made some suggestions for substantive changes in the circulating draft. As the author of Ross, I would like to have you join the opinion. At the same time I do not want to cause problems for those who have already joined.

I am willing to rewrite pages 8 and 9 in the manner shown on the attachment to this letter if it meets your concerns and does not cause too much difficulty for those who have joined.

Sincerely,



Justice Stevens

Enclosure

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U. S. 1117 (1982). The Ninth Circuit, however, rejected this approach, 707 F. 2d, at 1096, and the Government has not pursued this issue on appeal. We need not determine if respondents possessed a legitimate expectation of privacy in the packages, ~~because whatever privacy interests did exist were extinguished when the Customs officers had probable cause to believe that the pickup trucks contained contraband.~~ See *Ross, supra*, at 823.

Because the Customs officers had probable cause to believe that the pickup trucks contained contraband, any expectation of privacy in the vehicles or their contents was subjected to the authority of the officers to conduct a warrantless search.

The warrantless search was not unreasonable

~~Any privacy interests that might have existed before the vehicles were seized certainly were not revived merely because the Customs officers returned to Tucson and placed the packages in a DEA warehouse rather than immediately opening them.~~ Cf. *United States v. Jacobsen*, — U. S. —, — (1984) (no privacy interest in package that was in possession of and had been examined by private party); *Michigan v. Thomas*, 458 U. S., at 261. ~~Moreover, the practical effect of the decision below would only be to direct police officers to search immediately all containers that they discover in the course of a vehicle search.~~ Cf. *Ross, supra*, at 807 n. 9 (noting similar consequence if police could not conduct warrantless search after vehicle is impounded). This result would be of little benefit to the person whose property is searched, and where police officers are entitled to seize the container and continue to have probable cause to believe that it contains contraband, we do not think that delay in the execution of the warrantless search is necessarily unreasonable. Cf. *Cardwell v. Lewis*, 417 U. S., at 592-593 (impoundment and one-day delay did not make examination of exterior of vehicle unreasonable where it could have been done on the spot); *United States v. Edwards*, 415 U. S. 800, 805-806 (1974) (warrantless search of suspect's clothing permissible notwithstanding delay after initial arrest).

opposite conclusion

~~We have recognized the need to provide law enforcement officers with clear guidelines in this area, see *Ross*, 456 U. S., at 808-804, and we have eschewed a case-by-case inquiry with respect to the practical need to dispense with a~~

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PP. 1, 3, 8-9

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: JAN 9 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1625

**UNITED STATES, PETITIONER v. LYLE GERALD
JOHNS ET AL.**

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

[January —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

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I

Pursuant to an investigation of a suspected drug smuggling operation, a United States Customs officer went to respondent Duarte's residence in Tucson, Ariz., where he saw two pickup trucks. The Customs officer observed the trucks drive away, and he contacted other officers who conducted ground and air surveillance of the trucks as they traveled 100

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