

The Burger Court Opinion Writing Database

California v. Carney

471 U.S. 386 (1985)

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: FEB 28 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-859

CALIFORNIA, PETITIONER v. CHARLES R. CARNEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF CALIFORNIA

[March —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether law enforcement agents violate the Fourth Amendment when they conduct a warrantless search, based on probable cause, of a fully mobile "motor home."

I

On May 31, 1979, Drug Enforcement Agency Agent Robert Williams watched the respondent, Charles Carney, approach a youth in downtown San Diego. The youth accompanied Carney to a Dodge Mini Motor Home parked in a nearby lot. Carney and the youth closed the window shades in the motor home, including one across the front window.

Agent Williams had previously received uncorroborated information that the same motor home was used by another person who was exchanging marihuana for sex. Williams, with assistance from other agents, kept the motor home under surveillance for the entire 1¼ hours that Carney and the youth remained inside. When the youth left the motor home, the agents followed and stopped him. The youth told the agents that he had received marihuana in return for allowing Carney certain sexual contacts.

At the officers' request, the youth returned to the motor home and knocked on its door; Carney stepped out. The agents identified themselves as law enforcement officers.

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



CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1985

Re: No. 83-859 - California v. Carney

Dear Harry:

Thank you for your note. It was my understanding at Conference that the majority of the Court preferred an objective, bright-line test that police on the beat would have a reasonable chance of following. I understood the Court's holding to be a rejection of the "principal function" test applied by the California Supreme Court, and consequently the rejection of a similar "primary function" test in this case.

I believe that the Conference's rejection of the lower court's "principal function" test was based on sound reasoning. Any inquiry into the "primary function" of a vehicle mandates an inspection of the interior which the officer has never seen; that is inherently subjective and speculative. The record in this case, for example, does not indicate with any certainty whether the vehicle at issue had as its "primary" function use as a vehicle or use as a dwelling; it shows that it was capable of being used as either.

With regard to the Solicitor General, I believe that my draft is fully consistent with the Solicitor General's position as it applies to the facts of this case. On page 19 of the Solicitor General's brief, for example, he states, "[A] motor home that is treated by the state as a vehicle for regulatory purposes and that is come upon by the police when it is being used as a vehicle should be retained within the automobile exception." Again, on page 19 note 8, he states, "Our approach would thus draw the line between 'vehicles' and 'residences' not on the basis of the attributes of the vehicle, but on the basis of whether it is at least temporarily affixed to the site or is fully mobile." (emphasis added) My draft conforms to that approach; I would welcome suggestions how to make it more so.

As to your suggestion that the location of the vehicle is important, we recognize that this case involves a vehicle parked in a public lot. Our decision thus does not--and, properly, should not--decide what standard would apply to a vehicle parked in a different sort of setting. I could readily include language leaving for another day determination of what standards would apply if a vehicle such as this one is not parked on or near a

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public thoroughfare, but for vehicles out on the street I am persuaded that the simplest, soundest "test" is ready mobility, which would likely exclude a "vehicle" with plumbing and power attachments to public facilities.

Regards,



Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 13, 1985

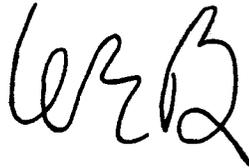
Re: No. 82-859 - California v. Charles R. Carney

MEMORANDUM TO THE CONFERENCE

A few "extracurricular" matters, e.g., Judicial Conference, Williamsburg Conference, sessions on the 3.5 COLA, and security problems have held up my work on this case.

However, I expect to have a new draft taking into account circulated memos and the need to clarify what we are not deciding.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1985

Re: 83-859 - California v. Carney

MEMORANDUM TO THE CONFERENCE:

I have deferred circulating a revised draft until the dissent was available.

A new draft will be around tomorrow.

Regards,

A handwritten signature in black ink, appearing to be 'W. B.', written over the typed word 'Regards,'.

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: APR 23

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-859

CALIFORNIA, PETITIONER v. CHARLES R. CARNEY

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA**

[April —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether law enforcement agents violated the Fourth Amendment when they conducted a warrantless search, based on probable cause, of a fully mobile "motor home" located in a public place.

I

On May 31, 1979, Drug Enforcement Agency Agent Robert Williams watched respondent, Charles Carney, approach a youth in downtown San Diego. The youth accompanied Carney to a Dodge Mini Motor Home parked in a nearby lot. Carney and the youth closed the window shades in the motor home, including one across the front window. Agent Williams had previously received uncorroborated information that the same motor home was used by another person who was exchanging marihuana for sex. Williams, with assistance from other agents, kept the motor home under surveillance for the entire one and one-quarter hours that Carney and the youth remained inside. When the youth left the motor home, the agents followed and stopped him. The youth told the agents that he had received marihuana in return for allowing Carney sexual contacts.

At the officers' request, the youth returned to the motor home and knocked on its door; Carney stepped out. The

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

CHAMBERS OF
THE CHIEF JUSTICE

April 25, 1985

Re: No. 83-859 - California v. Charles R. Carney

MEMORANDUM TO THE CONFERENCE:

I contemplate dropping the citation to State v. Mower in Footnote 2, page 6, and dropping the second sentence of Footnote 3, page 8.

Regards,

A handwritten signature in black ink, appearing to be "WR", written in a cursive style.

Changes as marked
p. 6

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

From: **The Chief Justice**

Circulated: _____

Recirculated: APR 26 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-859

CALIFORNIA, PETITIONER *v.* CHARLES R. CARNEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA

[April —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether law enforcement agents violated the Fourth Amendment when they conducted a warrantless search, based on probable cause, of a fully mobile "motor home" located in a public place.

I

On May 31, 1979, Drug Enforcement Agency Agent Robert Williams watched respondent, Charles Carney, approach a youth in downtown San Diego. The youth accompanied Carney to a Dodge Mini Motor Home parked in a nearby lot. Carney and the youth closed the window shades in the motor home, including one across the front window. Agent Williams had previously received uncorroborated information that the same motor home was used by another person who was exchanging marihuana for sex. Williams, with assistance from other agents, kept the motor home under surveillance for the entire one and one-quarter hours that Carney and the youth remained inside. When the youth left the motor home, the agents followed and stopped him. The youth told the agents that he had received marihuana in return for allowing Carney sexual contacts.

At the officers' request, the youth returned to the motor home and knocked on its door; Carney stepped out. The

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

CHAMBERS OF
THE CHIEF JUSTICE

April 29, 1985

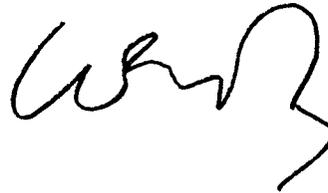
Re: No. 83-859 - California v. Carney

MEMORANDUM TO THE CONFERENCE:

We had this case on as a "tentative" for Monday's announcement.

I will have some small additions in short order.

Regards,



83-859

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

File

CHAMBERS OF
THE CHIEF JUSTICE

Dear Lewis

Will this do

J.?

Regards

WRB

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

CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1985

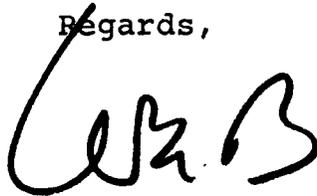
Re: No. 83-859 - California v. Charles R. Carney

MEMORANDUM TO THE CONFERENCE:

I have concluded not to enlarge the opinion in this case.

Accordingly, the case can come down Monday unless someone objects.

Regards,

A handwritten signature in black ink, appearing to be "W. B. Brennan", written in a cursive style.

7AB

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

CHAMBERS OF
THE CHIEF JUSTICE

May 21, 1985

MEMORANDUM TO THE CONFERENCE:

RE: No. 84-1141 - Holland v. United States

This case was held for California v. Carney (No. 83-859), which was decided May 13, 1985. The petition will be discussed at the May 23 Conference.

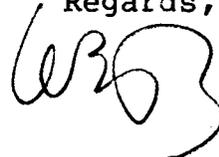
An informant told the police that he had purchased one pound of marijuana from Aaron Holland, the brother of three of the defendants in this case. The informant further stated that Holland had asked him to transport a large quantity of marijuana. Monitored telephone calls by the informant to Holland confirmed the upcoming deal.

Thereafter, two rented Winnebago motor homes appeared at Holland's house. The two motor homes were driven to Fort Myers, Florida by the four Holland brothers and Paul Murphy. Along the way, the Hollands and Murphy stayed in hotel rooms. Once in Fort Myers, the Holland brothers agreed to buy a large quantity of marijuana from a local dealer. The motor homes were driven to a residence, and the marijuana was loaded into the vehicles. Shortly after the Hollands and Murphy left the residence in the motor homes, they were stopped by the police. During a warrantless search of the motor homes, the police found 1495 pounds of marijuana.

The Hollands and Murphy were convicted in the District Court of conspiracy to possess marijuana in excess of 1000 pounds. See 21 U.S.C. §§841(a)(1), 846; 18 U.S.C. §2. The Court of Appeals for the Eleventh Circuit affirmed their convictions. The Court of Appeals held that the warrantless search was justified under the automobile exception because the motor homes were used "solely for transportation."

The holding of the CALL is consistent with our holding in No. 83-859, California v. Carney. I will vote to deny.

Regards,



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 1, 1985

No. 83-859

California v. Carney

Dear Chief:

At Conference, I said that I could go along with a test based on objective external indicia to indicate whether a vehicle was being used as a home or merely as a car. Your opinion appears to draw the line based solely on mobility. I will therefore probably write an opinion concurring in the judgment. In the meantime, I'll be interested to read John's writing.

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.

April 22, 1985

No. 83-859

California v. Carney

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference

17

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 11, 1985

83-859 - California v. Carney

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 24, 1985

Re: No. 83-859-California v. Carney

Dear John:

Please join me in your dissent.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1985

Re: No. 83-859, California v. Carney

Dear Chief:

I have some difficulty with your opinion in this case. I thought that a majority of the Conference wished to pursue the Solicitor General's primary position, that is, that searches of motor homes concern conflicting interests in privacy and in effective use of the police power, that primary use of the motor home is the important and governing factor, and that, therefore, when a motor home is being used primarily as a home, privacy rights prevail, whereas when it is used primarily for transportation, it should be treated as a mobile vehicle for purposes of the automobile exception. A bright-line rule reflecting this balance would focus on the location of the vehicle. For me, when these standards are applied, this case is not a difficult one, for dwelling indicia are minimal when a motor home is parked off a city street.

Because your draft appears not to recognize sufficiently any expectation of privacy in a home that happens to be mobile, and seems to rely exclusively on mobility in determining the applicability of the automobile exception (except for the situation described in footnote 3), it does not reflect the balance between privacy interests and police interests that I prefer and that I thought the conference majority had struck. Indeed, the draft suggests that if the home is "readily mobile," it is subject to the automobile exception regardless of other considerations. See draft at page 5. If this remains your view, I cannot join the opinion and I shall have to write separately in concurrence.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 25, 1985

Re: No. 83-859, California v. Carney

Dear Chief:

Please join me in your recirculation of April 23.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 26, 1985

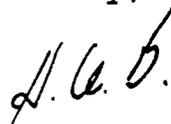
Re: No. 83-859, California v. Carney

Dear Chief:

I, for one, hope that you will not delete the second sentence of footnote 3 on page 8 of your recirculation of April 23. With that sentence retained, I think we have a fairly bright line test which should be of help to law enforcement officers. It is helpful dicta, and I hope it will remain in the opinion.

My joinder, however, is unaffected.

Sincerely,



The Chief Justice

cc: The Conference

March 8, 1985

PERSONAL

83-859 California v. Carnev

Dear Chief:

Although I agree with much of your first draft (that I read today for the first time), I am sending this private letter because I would have difficulty joining your opinion in its present form. It is clear from the Conference votes that we agreed with the SG's primary reasoning. I enclose a copy of my Conference notes.

The SG recognizes that there are two rationales for the "automobile exception": (i) mobility; and (ii) a reduced expectation of privacy. The SG goes on to state that it is "undeniable that greater privacy interests may be implicated by a search of a camper or motor home than of a conventional automobile." SG brief, p. 12. Because of this greater expectation of privacy, warrantless searches of motor homes should be allowed only when the vehicle is "subject to state motor vehicle registration laws [and] ... on a public street or parked in a location inappropriate for residence." SG brief, p. 6.

Your opinion states that mobility is the "principal foundation" for the automobile exception to the warrant requirement. This was certainly true initially. We repeatedly have held in subsequent cases, however, that the exception also is justified by the lessened expectation of privacy that an individual has in his automobile. See Arkansas v. Sanders, 442 U.S. 753, 761 (1979) ("configuration, use, and regulation of automobiles often may dilute the reasonable expectation of privacy"); South Dakota v. Opperman, 428 U.S. 364, 367 (1976) ("less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office"). In deciding whether a motor home can be searched without a warrant, we cannot ignore this second rationale for the automobile exception.

I do not believe that a "bright line" can be drawn based solely on whether or not the vehicle is mobile because there may be a greater expectation of privacy in many types

of mobile homes than in an automobile. There are, for example, thousands of mobile homes in Florida - and indeed in many other states - that are occupied as principal residences. They are connected to public utility services provided in mobile home parks. For the most part, objective facts distinguish a vehicle used as a residence from one used solely for transportation.

Although these motor homes often are used as residences, they also may be moved on the highway (e.g., to Florida for the winter). While moving on a public highway, parked on a public street, or - as in this case - parked in a location inappropriate for a residence, these factors outweigh the "expectation of privacy" interests. The fact of mobility becomes the paramount factor.

In sum, I believe that both of the rationales for the automobile exception must be considered - as the SG argues. In this case, mobility justified the warrantless entry. My Conference notes that make reasonably clear that all of us except John agreed with the SG.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 23, 1985

83-859 California v. Carney

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 8, 1985

Re: No. 83-859 California v. Carney

Dear Chief,

Please join me.

Sincerely,

WR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 28, 1985

Re: 83-859 - California v. Carney

Dear Chief,

Although I may come to a different conclusion when I write it out, I plan to try my hand at a dissenting opinion.

Respectfully,



Chief Justice Burger

Copies to the Conference

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

From: Justice Stevens

Circulated: APR 18 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-859

CALIFORNIA, PETITIONER *v.* CHARLES R. CARNEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF CALIFORNIA

[April —, 1985]

JUSTICE STEVENS, dissenting.

The character of “the place to be searched”¹ plays an important role in Fourth Amendment analysis. In this case, police officers searched a Dodge/Midas Mini Motor Home. The California Supreme Court correctly characterized this vehicle as a “hybrid” which combines “the mobility attribute of an automobile . . . with most of the privacy characteristics of a house.”²

The hybrid character of the motor home places it at the crossroads between the privacy interests that generally forbid warrantless invasions of the home, *Payton v. New York*, 445 U. S. 573, 585-590 (1980), and the law enforcement interests that support the exception for warrantless searches of automobiles based on probable cause, *United States v. Ross*, 456 U. S. 798, 806, 820 (1982). By choosing to follow the latter route, the Court errs in three respects: it has entered new territory prematurely, it has accorded priority to an exception rather than to the general rule, and it has abandoned the limits on the exception imposed by prior cases.

¹The Fourth Amendment provides:

“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.” U. S. Const., Amdt. 4.

²34 Cal. 3d 597, 606, 668 P. 2d 807, 812 (1983).

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES.

1, 4, 12

From: **Justice Stevens**

Circulated: _____

Recirculated: APR 25 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-859

CALIFORNIA, PETITIONER *v.* CHARLES R. CARNEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA

[April —, 1985]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL join, dissenting.

The character of “the place to be searched”¹ plays an important role in Fourth Amendment analysis. In this case, police officers searched a Dodge/Midas Mini Motor Home. The California Supreme Court correctly characterized this vehicle as a “hybrid” which combines “the mobility attribute of an automobile . . . with most of the privacy characteristics of a house.”²

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²34 Cal. 3d 597, 606, 668 P. 2d 807, 812 (1983).

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 25, 1985

Re: 83-859 California v. Charles R. Carney

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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