

The Burger Court Opinion Writing Database

Dowling v. United States

473 U.S. 207 (1985)

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

June 6, 1985

Re: No. 84-589 - Dowling v. United States

Dear Lewis:

My notes on your views in this case were that you thought an
"easy affirm."

If so, would you like to take on a dissent?

Regards,

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

Justice Powell
Justice White
Justice O'Connor

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

June 6, 1985

CHAMBERS OF
THE CHIEF JUSTICE

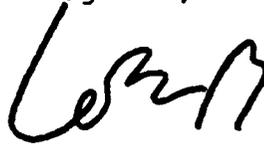
Re: No. 84-589 - Dowling v. United States

Dear Harry:

Bill has reassigned this case to you for a reversal.

You are quite right that there were some "tentative" votes: Rehnquist tentative to reverse; White tentative to affirm. It may be that, given a close case, others may shift votes, but that cannot be determined until your opinion is circulated.

Regards,



Justice Blackmun

Copies to the Conference

82 701-1 67:03

UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N ZEEB RD
ANN ARBOR MI 48106
LIBRARY OF CONGRESS

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

CHAMBERS OF
THE CHIEF JUSTICE

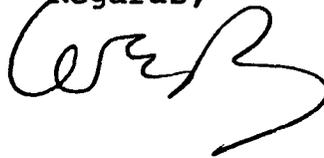
June 20, 1985

Re: No. 84-589 - Dowling v. United States

Dear Harry:

I will wait on the dissent.

Regards,



Justice Blackmun

Copies to the Conference

92 70 50 10 10 10

IN REPLY PLEASE REFER TO THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1985

Re: No. 84-589 - Dowling v. United States

Dear Lewis:

I join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'L. Powell', written over the typed name 'Justice Powell'. The signature is stylized and cursive.

Justice Powell

Copies to the Conference

82 101 SR 61 004

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 29, 1985

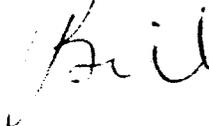
No. 84-589

Dowling v. United States

Dear Bill,

Thurgood, John, you and I are in
dissent in the above. Would you take it
on?

Sincerely,



Justice Rehnquist

Copies to Justice Marshall
Justice Stevens

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

June 4, 1985

No. 84-589

Dowling v. United States

Dear Harry,

If four others join you to reverse,
as I do, and it falls to me to assign
the opinion for the Court, I assign the
opinion to you.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

.87 WA 30 1985

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 12, 1985

No. 84-589

Dowling v. United States

Dear Harry,

I agree.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

.32 17 15 11 50

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 12, 1985

84-589 - Dowling v. United States

Dear Harry,

I shall await the dissent.

Sincerely yours,



Justice Blackmun
Copies to the Conference

92 JUN 15 1985

201

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1985

84-589 - Dowling v. United States

Dear Lewis,

Please join me.

Sincerely yours,

Justice Powell

Copies to the Conference

52 JUN 24 1985

RECEIVED
LEVEL THE
COMMUNICATIONS OF THE
HANDSOME DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1985

Re: No. 84-589-Dowling v. United States

Dear Harry:

Please join me.

Sincerely,

Jm.

T.M.

Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1985

MEMORANDUM TO THE CONFERENCE

Re: No. 84-589, Dowling v. United States

This is the Elvis Presley records case. At conference, the vote was 5 to 4 to affirm, but several of the votes, mine included, indicated that they were distinctly tentative. I suppose the case was assigned to me on the "least persuaded" theory.

In any event, I am now inclined to reverse. I am not satisfied that the narrow interpretation we typically give federal criminal statutes permits §2314 to reach petitioner's conduct. I am particularly influenced by Congress' authority to regulate copyright infringement directly; this makes me reluctant to conclude, absent firm indications in the text or the legislative history, that it intended commerce power legislation to do so indirectly.

I shall be glad to write up the case on a reversal basis, but, of course, Bill Brennan may prefer to assign it elsewhere.

The others who voted to affirm were the Chief, Byron, Lewis, and Sandra. Someone may wish to think about writing an opinion for affirmance.

H.A.B.

64 JUN 32 1985

LIBRARY OF CONGRESS

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

From: Justice Blackmun

Circulated: JUN 11 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-589

PAUL EDMOND DOWLING, PETITIONER *v.* UNITED STATES

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

[June —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

The National Stolen Property Act provides for the imposition of criminal penalties upon any person who "transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5000 or more, knowing the same to have been stolen, converted or taken by fraud." 18 U. S. C. §2314. In this case, we must determine whether the statute reaches the interstate transportation of "bootleg" phonorecords, "stolen, converted or taken by fraud" only in the sense that they were manufactured and distributed without the consent of the copyright owners of the musical compositions performed on the records.

I

After a bench trial in the United States District Court for the Central District of California conducted largely on the basis of a stipulated record, petitioner Paul Edmond Dowling was convicted of one count of conspiracy to transport stolen property in interstate commerce, in violation of 18 U. S. C. §371; eight counts of interstate transportation of stolen property, in violation of 18 U. S. C. §2314; nine counts of copyright infringement, in violation of 17 U. S. C. §506(a); and

1
STYLISTIC CHANGES
4 p. 10

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 18 1985

~~HAS
Please join me
JH~~

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-589

PAUL EDMOND DOWLING, PETITIONER *v.* UNITED STATES

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

[June —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

The National Stolen Property Act provides for the imposition of criminal penalties upon any person who "transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5000 or more, knowing the same to have been stolen, converted or taken by fraud." 18 U. S. C. §2314. In this case, we must determine whether the statute reaches the interstate transportation of "bootleg" phonorecords, "stolen, converted or taken by fraud" only in the sense that they were manufactured and distributed without the consent of the copyright owners of the musical compositions performed on the records.

I

After a bench trial in the United States District Court for the Central District of California conducted largely on the basis of a stipulated record, petitioner Paul Edmond Dowling was convicted of one count of conspiracy to transport stolen property in interstate commerce, in violation of 18 U. S. C. §371; eight counts of interstate transportation of stolen property, in violation of 18 U. S. C. §2314; nine counts of copyright infringement, in violation of 17 U. S. C. §506(a); and

John

RECEIVED
FBI
THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Stylistic Changes
Footnotes Renumbered
Pages: 2, 4, 5, 11, 14, 16, 18

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 25 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-589

PAUL EDMOND DOWLING, PETITIONER v. UNITED STATES

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

[June 28, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

The National Stolen Property Act provides for the imposition of criminal penalties upon any person who "transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud." 18 U. S. C. §2314. In this case, we must determine whether the statute reaches the interstate transportation of "bootleg" phonorecords, "stolen, converted or taken by fraud" only in the sense that they were manufactured and distributed without the consent of the copyright owners of the musical compositions performed on the records.

I

After a bench trial in the United States District Court for the Central District of California conducted largely on the basis of a stipulated record, petitioner Paul Edmond Dowling was convicted of one count of conspiracy to transport stolen property in interstate commerce, in violation of 18 U. S. C. §371; eight counts of interstate transportation of stolen property, in violation of 18 U. S. C. §2314; nine counts of copyright infringement, in violation of 17 U. S. C. §506(a); and

RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 7, 1985

84-589 Dowling v. United States

Dear Chief:

This refers to your two letters of June 16 about the above case, one to Harry and one to me.

In the letter to Harry, you note that there were some "tentative" votes, and that "others may shift votes" that can be determined only when Harry's opinion is circulated.

Your note to me inquires whether I would write the dissent. I will, of course, do so unless someone else is more interested and certain of his or her position. At Conference I did think the case was an "easy affirm", but on further consideration I can see a good deal of merit to Harry's current views.

Nevertheless, if you want me to do the best I can with a dissent - recognizing that quite possibly I may not agree with it - I will be glad to give it a try.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

RECEIVED AND FORWARDED TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES BY THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

06/21

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

From: Justice Powell

Circulated: JUN 21 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-589

PAUL EDMOND DOWLING, PETITIONER v. UNITED STATES

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

[June —, 1985]

JUSTICE POWELL, dissenting.

The Court holds today that §2314 does not apply to this case because the rights of a copyright holder are "different" from the rights of owners of other kinds of property. The Court does not explain, however, how the differences it identifies are relevant either under the language of §2314 or in terms of the purposes of the statute. Because I believe that the language of §2314 fairly covers the interstate transportation of goods containing unauthorized use of copyrighted material, I dissent.

Section 2314 provides for criminal penalties against any person who "transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud." 18 U. S. C. §2314. There is no dispute that the items Dowling transported in interstate commerce—bootleg Elvis Presley records—are goods, wares, or merchandise. Nor is there a dispute that the records contained copyrighted Elvis Presley performances that Dowling had no right to reproduce and distribute. The only issue here is whether the unauthorized use of a copyright may be "equate[d] with theft, conversion, or fraud" for purposes of §2314. *Ante*, at 10. Virtually every court that has considered the question has concluded that §2314 is broad enough to cover activities such as Dowling's. See,

UNIVERSITY OF MICHIGAN LIBRARY OF CONGRESS

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

From: Justice Powell

Circulated: JUN 26 1985

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 84-589

PAUL EDMOND DOWLING, PETITIONER *v.* UNITED STATES

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

[June 28, 1985]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and JUSTICE WHITE join, dissenting.

The Court holds today that §2314 does not apply to this case because the rights of a copyright holder are "different" from the rights of owners of other kinds of property. The Court does not explain, however, how the differences it identifies are relevant either under the language of §2314 or in terms of the purposes of the statute. Because I believe that the language of §2314 fairly covers the interstate transportation of goods containing unauthorized use of copyrighted material, I dissent.

Section 2314 provides for criminal penalties against any person who "transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud." 18 U. S. C. §2314. There is no dispute that the items Dowling transported in interstate commerce—bootleg Elvis Presley records—are goods, wares, or merchandise. Nor is there a dispute that the records contained copyrighted Elvis Presley performances that Dowling had no right to reproduce and distribute. The only issue here is whether the unauthorized use of a copyright may be "equate[d] with theft, conversion, or fraud" for purposes of §2314. *Ante*, at 10. Virtually every court that has considered the question has concluded that §2314 is

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 30, 1985

Re: No. 84-589 Dowling v. United States

Dear Bill,

My vote to reverse in this case was very tentative and I could be persuaded by the majority opinion. If you still wish me to take on the dissent with that understanding I will be happy to do so.

Sincerely,

Wm

Justice Brennan

cc: Justice Marshall

at 10 1 31

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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


CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1985

Re: No. 84-589 Dowling v. United States

Dear Harry,

Please join me.

Sincerely,

WR

Justice Blackmun

cc: The Conference

JUN 14 1985

PROPERTY OF THE ARCHIVES OF THE SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 11, 1985

Re: 84-589 - Dowling v. United States

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun

Copies to the Conference

82 JUN 15 10:23

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

4
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 19, 1985

No. 84-589 Dowling v. United States

Dear Harry,

Please join me.

Sincerely,

Sandra

Justice Blackmun

32 10 09:58

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS