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William H. Rehnquist

US Supreme Court Justice

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 15, 1983

MEMORANDUM TO THE CONFERENCE

Cases held for No. 81-430 - Illinois v. Gates

No. 82-1711 - Colorado v. Quintero

Respondent was arrested on suspicion of burglary, and a variety of stolen property was found in his possession; he was convicted of burglary. The facts, as described by the Colorado court, are as follows:

"On September 29, 1981, at 12:45 p.m., Darlene Bergan was sweeping the porch of her home at 691 South Vine Street in Denver. It was a hot day and the temperature was in the 80 degree range or above that. Darlene Bergan's house is located adjacent to the bus stop at the corner of Exposition and Vine. She saw a man walking on the opposite side of the street and watched him go up on the porch of the house and stand at the front door for approximately twenty seconds, and then saw him stand at the front window so that he could peer into the front of the house for approximately the same amount of time. He then left the porch and proceeded north and appeared to be looking at the windows on the side of the house. He then walked in a northerly direction on Vine Street, stopped at another house, and then could not be seen by Mrs. Bergan. He was wearing a short sleeve shirt and appeared to be watching Mrs. Bergan. She next saw him at 1:45 p.m. while he was standing at a bus stop next to her house. He had taken off his shirt and had used the shirt to cover a television set. He paced nervously and was trying to thumb a ride or hitchhike while waiting for the bus to arrive. Mrs. Bergan

thought he looked quite 'antsey' and called the police. The police radio dispatcher reported that a possible burglary suspect was at the corner of Exposition and Vine.

Officer Freeman, a twenty-one year police veteran, was the first to respond and arrived approximately five minutes after the call was made. He asked Quintero for identification and Quintero had none. Other officers who arrived at the scene assisted in the investigation. Quintero claimed that he had bought the television set from someone in the neighborhood for \$100 and was trying to go home with it. He was in an undershirt and had brown wool gloves in his back pocket which were found in a 'pat down' search for weapons. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). While he was being questioned, Mrs. Bergan made herself known to the officers as the woman who had called the police and reported what she had seen. However, she did not tell the police officers what she had seen before the arrest was made. After Mrs. Bergan identified herself, Quintero was arrested and searched. Under the shirt the police found the television set and a video game. The police also found \$140 in cash, five rings (including two class rings bearing different initials and class years), and some ladies jewelry in Quintero's pants pockets when he was searched at the police station.

After the arrest was made, the officers checked the neighborhood and were unable to determine that a burglary had occurred. Later that day, however, the owners of a house one block south of Mrs. Bergan's reported that their house had been burglarized and that a television set and a video game had been stolen. The television set and video game that were in the possession of Quintero when he was arrested were identified as the items taken in the burglary. It was approximately five hours after Quintero was arrested that the police learned that the items taken were obtained in the burglary."

Exclusion!

The Colorado Supreme Court held that the police lacked probable cause to arrest respondent, relying principally on the fact that at the time of the arrest "no evidence existed to establish that a crime had been committed." Because of this, seizure of the stolen property had been unlawful, and these items should have been suppressed. The court expressly refused to fashion a good faith exception to the exclusionary rule on the grounds that this Court was responsible for such changes in the law. Indeed, it narrowly construed a state statute authorizing use of evidence seized in good faith as extending only to errors of fact, not of law.

The question whether or not the arresting officers possessed probable cause to arrest respondent appears not to be presented in the petition, which focuses on whether the exclusionary rule should be applied to good faith seizures of property. From the standpoint of recognizing a good faith exception to the exclusionary rule, the case does not present the difficulties, encountered in Gates, of inquiring into the reasonableness of a magistrate's conduct. Rather, the case involves on-the-street conduct of police officers of the sort that the reasonable, good faith exception generally is associated with. I think the case provides a potentially good vehicle for considering the good faith issue and I will vote to grant.

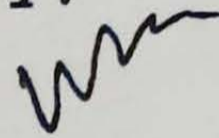
There appear to be no jurisdictional obstacles to reaching the good faith question. The state court opinion does not cite a state constitutional provision. The decision discusses a state law that requires state courts to admit evidence seized in good faith, but construed that law as requiring admission only of a narrow category of evidence. The court did not suggest that the state law forbid admission of evidence not falling within this category, and thus, the law provides no independent and adequate state ground. Although the state court opinion cites to some of its earlier decisions in discussing the Fourth Amendment issue, these cases appear to rest on Fourth Amendment grounds; moreover, the test set out in Michigan v. Long, 82-256, clearly would foreclose any claim that an independent and adequate state ground existed. I would grant the petition.

I would also be amenable to setting this case for argument with Michigan v. Clifford, No. 82-357, and, should

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there be sentiment to grant that case, Massachusetts v. Sheppard, No. 82-963 (see accompanying hold memo).

Sincerely,

A handwritten signature consisting of several wavy, connected lines, likely representing the initials of the sender.