10-1986

Colorado v. Bertine

Lewis F. Powell Jr.

See Bill's memo attached.

not worth the time of this Ct. to grant. Deny or could join summary reversal.

Police arrested Resp. for drunk driving, & conducted an inventory search of his truck at the scene of the arrest. Under N.Y. v. Belton (1981), the decision of Colo. S/Ct is clearly wrong.

Justice Powell: Response is in & adds nothing. I continue to recommend DENY, for the reasons stated in my memo of 2/4. Bill 3/18

Preliminary Memo

February 21, 1986 Conference
List 3, Sheet 2

No. 85-889-CSX

COLORADO	Cert to Colo. S.Ct. (Erickson et al.; Rovira, Quinn [dissenting]) good judge	
v.		
BERTINE (had evidence excluded)	State/Criminal	Timely

1. SUMMARY: Petr contends that a routine inventory search of closed containers in an automobile does not violate the Fourth Amendment.

2. FACTS AND DECISION BELOW: Resp was stopped by an officer of the Boulder Police Department for speeding and weaving in traffic. He was driving a 1957 panel truck at the time. After he was stopped, he was given a roadside sobriety test and then arrested for driving under the influence of alcohol. The

DENY - Bill (see memo attached)

arresting officer radioed for another officer to come and impound the truck. Resp was not asked for his permission for the impoundment or his wishes as to what else should be done with the truck. Another officer arrived and inventoried the contents of the truck pursuant to the impound. On the floor behind the front bench seat of the truck, the inventorying officer found a backpack. He opened the backpack and found a tan zippered nylon bag containing several hard objects. He opened the zippered bag and found four closed metal containers. He opened each of these containers and discovered several grams of cocaine, some cocaine-related paraphernalia, and $700 in cash.

Resp was charged with DWI and with possession of cocaine with intent to sell and distribute. On his motion to suppress the cocaine-related evidence, the state trial court held that the state constitution barred the search and thus excluded the evidence. The trial court did not reach petr's Fourth Amendment claim. Petr appealed. The Colo. S.Ct. affirmed but based its decision on the Fourth Amendment rather than on the state constitution.

The majority rejected petr's contention that the case was governed by Illinois v. Lafayette, 462 U.S. 640 (1983), in which this Court held that an inventory search of containers found on the person of someone about to be incarcerated was constitutionally permissible. Distinguishing this car impound case from the preincarceration situation in Lafayette, the Colo. S.Ct. held that the balancing test of South Dakota v. Opperman, 428 U.S. 364 (1976), should be applied to determine whether

containers could be opened and searched during the inventory of a car.

Applying this test, the Colo. S.Ct. found that the interests justifying such a search were much stronger in the preincarceration context than in the automobile impound context and declined to extend Lafayette's holding to this case. In reaching this conclusion, the Colo. S.Ct. relied on its decision in People v. Counterman, 556 P.2d 481 (1976), in which it had held that an inventory search of a closed knapsack found in an impounded vehicle violated the Fourth Amendment. This holding was based on the court's conclusion that the strong privacy interests in the knapsack outweighed the relatively weak governmental interests in inventorying the contents of the knapsack.

The Colo. S.Ct. also held that the governmental interests in this particular case did not render the search of the backpack reasonable: The impound lot was very secure, resp was available, and the search involved an intrusion into a container (the backpack) that was obviously intended as a respository for personal effects. Nor was there any indication that there were any dangerous or contraband objects present. The Colo. S.Ct. also rejected petr's argument that the search was permissible simply because it occurred pursuant to the police department's guidelines. In a footnote, the Colo. S.Ct. discussed New York v. Belton, 453 U.S. 454 (1981), and the rationale behind allowing a full search of the passenger compartment in that context. The

court contrasted those purposes with the interests supporting an inventory search.

The dissent disagreed. Basically, the dissent argued that Lafayette controlled. The dissent also contended that Belton was germane to this case because there the Court indicated its willingness to elevate law enforcement concerns over the individual's expectation of privacy in containers found in a car. The interests found in Belton are similar to those found here. In fact, the Court specifically recognized them in Opperman.

3. CONTENTIONS: Petr reasserts the arguments made by the dissent below: Lafayette and Opperman control. The Colo. S.Ct. incorrectly held that the governmental interest in the preincarceration context was greater than the governmental interest in the inventory context. This supposition is diametrically opposed to the holding in Opperman, where the Court upheld the governmental interest in such searches. The underlying interests are exactly the same as the Court recited in Opperman: (1) safekeeping of valuable property; (2) protection of the police from claims of false theft; and (3) protection of the police and the public from dangerous instrumentalities. The only additional interest in Lafayette was that the inspection of containers might help the police in determining the identity of the arrestee. The Opperman interests apply equally here.

Petr also asserts that the decision below conflicts with decisions in other courts. Petr asserts that other state courts have upheld inventory searches of closed containers found in cars. See, e.g., State v. Glenn, 649 S.W.2d 584, 587, 588 (Tenn.

1983) (collecting cases). Further, there is a split in the circuits. Three circuits have upheld such searches. See United States v. Griffin, 729 F.2d 475 (CA7 1984), cert. denied, 105 S.Ct. 117 (1984); United States v. Laing, 708 F.2d 1568 (CA11), cert. denied, 104 S.Ct. 246 (1983); United States v. Markland, 635 F.2d 174 (CA2 1980). One circuit has gone the other way. See United States v. Bloomfield, 594 F.2d 1200 (1979).

4. DISCUSSION: The question of whether closed containers found in a car may be opened and searched during an inventory of the car is one that this Court has not yet addressed specifically. And it appears that, at least before Lafayette, there was both a split among the states and a split in the circuits on this question. See, e.g., Laing, supra, and Bloomfield, supra. Because Lafayette does not, I think, actually control this type of case I would think that this variance might present a certworthy question.

One problem with some of these cases, however, is demonstrated by this case. That problem is the overlap of the impound cases with Belton. Although the Colo. S.Ct. discussed Belton generally, it did not seem to recognize that Belton might control this case. That is, resp here was arrested in a full custodial arrest. Under these circumstances, Belton would seem to authorize the search of any closed container found within the passenger compartment as part of a search incident to the arrest. (The description of where the backpack in this case was found would seem to me to be within the passenger compartment.) Since Belton, however, at least some courts have relied on the impound

search to authorize the search of containers in the passenger compartment where there was a full custodial arrest instead of Belton. See, e.g., Griffin, supra.

Thus, there seems to be a little confusion as to the relationship between impound searches and Belton. Although in some cases this confusion would not affect a court's decision whether to exclude evidence, in a few it might. In this case, for example, if the court treats impound searches of containers as prohibited then there would be a different result if Belton were applied to containers found in the passenger compartment. Further, containers found in a trunk might be subject to search under an impound search and not under Belton.

As to the certworthiness of this case, I'm not sure that the Court would want to grant cert if it will end up only reaffirming Belton. On the other hand, since the parties are arguing only the impound question, that question would seem to be properly presented. The issues here are confused since no one is talking about Belton's possible relevance, and it might be better to wait for a trunk case where the Belton issue was irrelevant and the impound issue presented in isolation.

5. RECOMMENDATION: If the Court wants to pursue this case further, a CFR would be appropriate as there is no response. It also might be appropriate to CFRec to nail down the question of whether this was in the passenger compartment or not.

There is no response.

January 28, 1986 Strand Opinion in petn

TO: Justice Powell

FROM: Bill would Deny

DATE: February 4, 1986

RE: Colorado v. Bertine, No. 85-889
Cert petition

Resp in this case was arrested for driving under the influence of alcohol; while he was still on the scene, police impounded and searched resp's truck. They found cocaine in a closed container, inside a knapsack that was in the truck's passenger compartment. The Colorado Supreme Court held that the search violated the Fourth Amendment.

The decision conflicts with New York v. Belton, 453 U.S. 454 (1981). Under Belton, the police were free to search the truck's passenger compartment as part of their search incident to respondent's arrest. That resolves this case. Thus, this case doesn't really present the issue that petr is arguing about: whether a warrantless inventory search of a car's contents is permissible under Illinois v. Lafayette, 462 U.S. 640 (1983) and South

Dakota v. Opperman 428 U.S. 364 (1976).[1] Since there is nothing certworthy in applying Belton to the facts of this case, I recommend that the Court treat this as an isolated state court error and deny cert.

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[1] In Opperman, you wrote a concurring opinion expressing the view that warrantless inventory searches of automobiles are permissible. See Opperman, 428 U.S., at 383-384 (POWELL, J., concurring). That opinion made sense then, and no intervening developments suggest that your view should be different now. The problem here is that the inventory-search issue can be reached only by ignoring a much clearer (and wholly uncertworthy) ground for reversal: Belton.

March 21, 1986

Court ..... *Voted on* ....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 85-889

Submitted ....., *19*... *Announced* ....., *19*...

COLORADO

vs.

BERTINE

Also motion for ifp.

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	POST	DIS	AFF	MERITS REV	AFF	MOTION G	D	ABSENT	NOT VOTING
Burger, Ch. J.		✓											
Brennan, J.			✓										
White, J.				Join 3									
Marshall, J.			✓										
Blackmun, J.				Join 3									
Powell, J.			✓										
Rehnquist, J.		✓											
Stevens, J.			✓										
O'Connor, J.		✓											

October 2, 1986

COLORADO GINA-POW

85-889 COLORADO v. BERTINE (Supreme Court of Colorado

November Arguments

MEMO TO FILE:

This is another "automobile search" case. Although I thought the Supreme Court of Colorado erred, I voted to deny because our prior cases have established the relevant principles. The Colorado Court largely ignored two relevant decisions, even though the dissenting opinion relied on them. In my view, this case is probably controlled by New York v. Belton, 453 U.S. 454, and U.S. v. Ross, 456 U.S. 798. Our decision, particularly my concurring opinion, in South Dakota v. Opperman, 428 U.S. 364 (sustaining the validity of "inventory searches"), also is relevant. Indeed, the SG's amicus brief relies primarily on Opperman.

In briefest summary, respondent was arrested for drunk driving. He was too drunk to continue to drive, and under established police regulations respondent's truck was impounded. A second officer had arrived on the scene, and - again in accord with regulations - they conducted a

search of the inside of the vehicle where they opened a knapsack and found contraband.

Although I believe the rationale of Belton probably controls, respondent argues that the police had probable cause to search in Belton and did not have it in this case. Respondent distinguishes Ross by a similar argument. My recollection is that neither Belton nor Ross conditioned the right to search incident to arrest to the existence of probable cause. The justification for the search was a right incident to "arrest". See Robinson.

It will be argued in this case that respondent was out of the vehicle and therefore could not have reached a weapon or concealed a contraband. These were points mentioned, as I recall, in Belton. I am not persuaded, however, that we should try to draw a line - a fine one - between whether the party lawfully arrested was in or out of the vehicle.

Apparently the SG thinks the stronger argument for the state in this case is the "inventory search" doctrine of South Dakota v. Opperman. I could decide the case on that basis, and - without having reread my concurring opinion - believe that what I wrote would be consistent. I would prefer, if this can be done in a principled

manner, to hold that the rationale of Belton applies. The Colorado Supreme Court relied heavily on Chadwick and my opinion in Arkansas v. Sanders. I believe both of these cases are clearly distinguishable, as the dissenting opinion by two Justices of the Colorado Supreme Court concluded.

Although I am familiar with this area, I would like a summary bench memo from my clerk. Respondent argues that in Belton, Ross and Opperman, the police had no "discretion" as they conducted searches incident to arrest or for inventory purposes in accord with regulations. In this case, however, respondent says the police had discretion. Even if this is correct, so long as the regulations authorized an inventory search of an impounded vehicle, I would think this should suffice. I do want my clerk's views.

LFP, JR.

adl 10/09/86

Reviewed 10/20 - Excellent memo.
Andy thinks the "inventory search" of Rear van, including the opening of a closed container, was valid under our decisions in Lafayette and Opperman (inventory at police station).
Andy would Reverse Colo S/Ct

BENCH MEMORANDUM

To: Mr. Justice Powell October 9, 1986

From: Andy

Re: State of Colorado v. Bertine, No. 85-889

Oral Argument: Wednesday, November 5, 1986

Cert to the Colorado S. Ct.

QUESTION PRESENTED

The question presented is whether the 4th amendment prohibits the police from opening a closed container found inside an automobile during a routine inventory search.

I. BACKGROUND

Early one morning a member of the Boulder, Colorado, police force saw resp's van weaving through traffic at an excessive speed. After pulling the van over into a "no parking" zone, the officer noticed that resp's eyes were glassy and his speech was slurred. The policeman conducted a series of sobriety tests, and then arrested resp for driving while intoxicated. Resp was handcuffed and placed in the patrol car.

By this time a backup policeman, Officer Reichenback, had arrived on the scene. The arresting officer asked Reichenback to impound resp's van, as permitted by city ordinance.[1] Reichenback called a tow truck, and at that point resp was taken to the police station.

Before the tow truck arrived, Reichenback conducted an inventory of the items inside the van. The Boulder police department directives specify that when a vehicle has been used in the commission of a crime, the police should make a "detailed vehicle inspection and inventory," and should remove personal items of value to be kept in police custody for safekeeping. See Cert Petn at 52 n. 2. The officer is required to record the results of the inventory on a standardized vehicle impound form.

During his search, Reichenback discovered a closed backpack behind the driver's seat. The officer unzipped the main compart-

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[1] The Boulder Rev. Code provides that a police officer may have any car removed from the street when the driver has been taken into custody, or when the car is blocking traffic. §§7-7-2(a)(4), (a)(1) (1981).

ment and removed a sealed nylon bag. Inside the bag were four tin cans which had been clipped shut. The officer opened the cans and found drug paraphernalia, cocaine, and $700 cash. Resp subsequently was charged with illegal possession of narcotics.

cans opened - drugs & cash

Resp moved to suppress the evidence on a variety of grounds, most of which were rejected by the tc. The court ruled, for example, that the police had complied with department guidelines when carrying out the search. The tc rejected the claim that Reichenback had searched the van in bad faith, finding specifically that the inventory was not a pretext for an investigatory search. The court also ruled that the search did not violated the U.S. Constitution, in light of this Court's decision in Illinois v. Lafayette, 462 U.S. 640 (1983) (pre-incarceration inventory search of shoulder bag permissible). The trial judge held, however, that the evidence must be suppressed because the search violated the Colorado Constitution. See Colo. Const. Art. II §7 (similar language to 4th amendment).

The state took an interlocutory appeal, and the Colo. S. Ct. affirmed. Significantly, the court based its decision on federal rather than state constitutional grounds. The state court acknowledged that warrantless inventory searches of automobiles were permissible, citing South Dakota v. Opperman, 428 U.S. 364 (1976). The court noted, however, that Opperman did not involve the search of closed containers found inside the car, and thus did not address the permissible scope of an inventory search. The relevant precedent on this question, said the state court, are Arkansas v. Sanders, 442 U.S. 753 (1979) (invalidating war-

Affirmed on federal grounds

did not involve search of closed containers

rantless search of luggage seized from car), and United States v. Chadwick, 433 U.S. 1 (1977) (same). Based on these two decisions, the Colo. court found that resp had a high expectation of privacy in the closed backpack, and that this interest outweighed the government's interest in making an inventory of the pack's contents. Consequently, the court agreed that the evidence should be suppressed as the product of an unreasonable search.

The state court also emphasized the the search was invalid because there were less invasive alternatives available to the police: (1) they could have left the backpack in the van, and impounded the vehicle and its contents as a single unit, thereby obviating the need for an inventory; (2) they could have removed the backpack and stored it as a single unit, since there was no reason to believe that the pack contained valuables or dangerous devices; (3) they could have asked resp what he wanted done with his van, and whether he wanted its contents stored separately. See Petn App 44-48; SG Brief at 5. Curiously, the court further suggested that some containers carried a higher expectation of privacy than others: "even assuming that the officer acted reasonably in opening either the backpack or the sealed nylon bag, little justification existed for further intrusion into the sealed cans." Id., at 48.

The Colo. court distinguished this Court's ruling in Lafayette, supra, which held that the right to conduct a pre-incarceration inventory search included the right to examine the contents of defendant's shoulder bag. The state court limited that decision to its facts, finding that the state had a particu-

lar interest in making sure that weapons and contraband were not carried into jail cells. That concern was not present in automobile inventories, said the court, and thus the state's interest in opening the backpack must give was to resp's expectation of privacy.

II. DISCUSSION

A. Grounds For The Decision

There are several opinions of this Court that bear on the question presented, although none are decisive. In your Memo to File, you stated a preference for resolving this case on the basis of the legal principles set forth in United States v. Ross, 456 U.S. 798 (1982), and New York v. Belton, 453 U.S. 454 (1981). I am not convinced that either case is controlling, however, because each is factually and doctrinally distinguishable.

In Ross, the defendant was arrested for selling drugs out of the trunk of his car. After the car was impounded, an investigative search of the trunk revealed two closed bags. The police opened the bags and found contraband. This Court upheld the search, finding that the "automobile exception" to the warrant clause allows the police to search every part of the vehicle, including sealed containers found within.

Similarly in Belton, the police arrested the driver and passengers of a car on suspicion of marihuana possession. After the suspects were removed from the vehicle, the officer conducted a "search incident" to the arrest. The policeman removed a jacket from the back sear and found drugs in one of the pockets. The

Court again upheld the search, holding that during a search incident, the police may check the contents of any container found within the passenger compartment.

While there is relevant language and reasoning in each of these decisions, it would be difficult to justify the search of resp's van under either the automobile or the search incident exception. Although the Colo. police had probable cause to arrest resp, there is no evidence that they had "probable cause" to search his van as well. Cf. Ross, 456 U.S., at 808-809 (automobile exception requires probable cause to believe that car contains fruits of a crime). It also seems clear that the search was not "incident" to the arrest, since resp had been taken to the police station before the inventory began. It is true that this exception does not turn on the suspect's ability to reach the container in question at the time of the search; in Belton the defendants were standing away from the car, and could not have reached for the evidence or a weapon. Nevertheless, I do not think that a search incident ever has been extended to a case where the defendant is literally miles away from the vehicle. This would be a troubling and unnecessary extension of the doctrine.

The most reasoned basis on which to decide this case is the "inventory search" exception to the warrant requirement. This Court has ruled that the police may conduct a routine, standardized inventory of the contents of a seized vehicle, even if there is no probable cause for the search. South Dakota v. Opperman, 428 U.S. 364 (1976). Emphasizing the "caretaking" duties of the

police and the lack of discretion held by the searching officer, the Court held that such an search is not "unreasonable" within the meaning of the 4th amendment. The state's right to conduct an inventory is justified by three administrative concerns: (1) the need to protect the suspect's property; (2) the need to protect the police from fraudulent claims of theft; and (3) the need to ensure that the seized property does not contain dangerous devices. Id., at 369.

Accordingly, the Court must address two issues raised by resp in support of the decision below: (1) did the police in this case conduct a valid inventory search? (2) if yes, does the right to inventory the contents of a vehicle include the right to open sealed containers?

Two Qs here

B. Was This an Inventory Search?

Resp argues that the search of his van is distinguishable from the inventory approved in Opperman, because here the police had unlimited discretion in deciding which drivers to subject to a search. Under department regulations, the police have three options when a car is seized. First, they may have the vehicle impounded and its contents inventoried, as was done here. Second, they may drive the car to a public parking lot, lock it, and leave it for the suspect to pick up when he is released. Finally, they may allow the suspect to call a third party, who then becomes responsible for the vehicle. The choice is left strictly to the arresting officer. Resp argues that this discretion distinguishes the case from Opperman, where the police apparently were required to inventory every car. Cf. id., at 383 (Powell,

3 options when a car is seized

J., concurring) (in an inventory search, "[t]he officer does not make a discretionary determination to search based on a judgment that certain conditions are present."). Unless the search is required by regulation in each case, argues resp, the Opperman rationale does not apply.

This argument raises a potentially troubling issue, but the facts are not quite as egregious as resp suggests. While it is true that the police had discretion whether to search, there was no discretion concerning the scope of the inventory once the decision is made. If the police elect to take responsibility for the contents of a vehicle, they are required to fill out a standardized form, listing all personal items that are to be removed and stored elsewhere. The procedure is routine, and does not call on the officer to exercise any judgment.

Resp's argument would be more persuasive if there was evidence below showing that the police made its decisions to impound on the basis of non-administrative concerns (e.g., the appearance or age of the driver), thus raising the inference that the "inventory" was a pretext for an investigative search. But the evidence in this case is to the contrary; the tc found that the search was conducted in good faith, and that it was not a pretext to search for evidence of criminal activity. Given this, and given that the officer apparently followed well-established procedure at all times, it seems clear that on these facts the police conducted a legitimate inventory search within the meaning of Opperman.

C. The Scope of the Search. The merits

The only S. Ct. case to discuss the scope of an inventory search is Illinois v. Lafayette, supra, where the Court held that a pre-incarceration search could include any article or item, sealed or unsealed, in the suspect's possession. The SG argues that Lafayette is controlling, because the interests at stake in this case are identical: resp's privacy interest in a backpack is the same as a suspect's interest in his shoulder bag, since both are used to store personal and valuable items. The state's interest in conducting the inventory also is identical to that found in Lafayette. The need to protect valuables, guard against false claims of theft, and uncover explosives is equally compelling in an automobile inventory as in a pre-incarceration search. The SG claims that the different factual setting of the Lafayette search is not substantial enough to justify limiting that case to its facts. See SG Brief at 17.

SG says Lafayette controls because interests of State are identical

The Colo. S. Ct. rejected a similar argument below and found Lafayette "inapplicable" to the inventory of a car. Resp agrees, arguing that Lafayette is distinguishable because the state's interest is not identical: there is an unusually high interest in ensuring that suspects do not carry contraband or weapons into the jail cells. Resp asserts that there is no similar state interest in discovering the contents of an impounded car, and that therefore Lafayette has no precedential effect on this case. Resp argues that the state's lower interest therefore must give way to resp's privacy concerns.

The state court and resp correctly point out that Lafayette is not decisive precedent for automobile inventories, given the extremely high state interest in pre-incarceration searches. Nevertheless, Lafayette remains strong authority for permitting the police to open sealed containers in other inventory cases. First, simply because the state has a lower interest in knowing the contents of a van does not mean that this interest is insignificant. See Opperman, supra, 428 U.S., at 379 (Powell, J. concurring). It thus does not follow a fortiori that resp's interest must prevail.

More importantly, there is no indication that the Lafayette majority intended to restrict that decision to certain types of searches. In fact, the evidence is to the contrary -- the primary justification for allowing the search of containers in that case was the "administrative" concerns (protect the property and the police), not the concern that contraband be kept out of jail cells. See 462 U.S., at 646. It also is interesting to note that in Lafayette, the Court stated that its decision was "amply support[ed]" by Opperman, even though the state's interest was the same there as it is in the current case.

The decisions in Ross and Belton also suggest that the decision below was erroneous. As mentioned, these two decisions address separate 4th amendment doctrines, but there is a unifying theme to these cases: once the police are legitimately inside the car, they should be permitted to take whatever reasonable steps are necessary to carry out their task. See, e.g., Ross, 789 U.S., at 821 ("When a legitimate search is under way, and when

its purpose and its limits have been precisely defined, nice distinctions between ... glove compartments, upholstered seats, trunks, and wrapped packages ... must give way to the prompt and efficient completion of the task at hand."). The SG and petr persuasively argue that the only way to fulfill the goals of an inventory search -- list items of value and uncover dangerous devices -- is to open and examine sealed containers.

The principles derived from these decisions convince me that the police did not violate the 4th amendment in opening resp's backpack. Despite the inferences of precedent, however, resp maintains that the decision below correctly interpreted the 4th amendment as placing two limitations on the scope of an inventory search. Neither of these restrictions stands up to careful scrutiny.

First, the state court ruled that the search of closed containers is not essential to an effective inventory, and thus is unsupported by Opperman rationale. Resp argues that if the containers are never opened, there is less risk of theft and less risk of false claims of theft, since the police will have no occasion to handle the property. See Opperman, supra, 428 U.S., at 391 n. 10 (Marshall, J., dissenting) (best way to deter false claims may be to seal car with all property inside). Also, it is not clear that the police are better protected from explosives by routinely opening containers than they are in simply storing them as a unit. See Resp Brief at 31-32. Resp therefore would impose a "single unit" limitation on the scope of an inventory: if the police find a sealed container that may be inventoried and stored

as a unit, they must do so rather than opening and examining the contents.

The core of this claim by Resp is that there are less intrusive alternatives available that will allow the state to meet its goals without invading the suspect's privacy interest. But while the argument may be descriptively accurate, it already has been rejected by this Court. In Lafayette, the defendant asserted that his shoulder bag should have been secured and stored as a unit, rather than having the contents inventoried. The Court held that there was no requirement that the police adopt the least restrictive alternative, noting: "We are hardly in a position to second-guess police departments as to what practical administrative method will best deter theft by and false claims against its employees and preserve the security of the station house." 462 U.S., at 648; see also Cady v. Dombrowski, 413 U.S. 433, 447 (1973) (rejecting "least restrictive means" requirement).

Resp's second proposed limitation would require the police to take into account the privacy interests that attach to certain types of containers, particularly luggage. Resp argues that Sanders, supra, and Chadwick, supra, establish that luggage and other personal containers do not lose their 4th amendment protection simply because they are discovered in a car. These decisions also hold that there is a much higher privacy interest in luggage than in the car itself, thereby suggesting that the two should be treated differently. Resp thus concludes that the police should be barred from opening this type of personal contain-

er, unless there is some reason to believe that the luggage (or backpack) contains valuable or dangerous items.

This argument should be rejected. First, neither Chadwick nor Sanders involved an inventory search, making the applicability of these cases tenuous at best. In Chadwick, in fact, the majority noted that its decision had no bearing on the availability of "other justifications for a warrantless search of luggage taken from a suspect at the time of his arrest." 433 U.S., at 15 n. 9. Second, it appears that the Lafayette defendant also argued that these two cases implicitly limit the scope of an inventory search. See 462 U.S., at 643-644. The Court necessarily rejected this argument, although it did not do so explicitly.

More importantly, the argument advanced by resp and the Colo. court would require the police to conduct a "container by container" analysis during the inventory. Under this limitation the officers would have to distinguish between "personal" and "non personal" containers, between those containers that the police have reason to believe contain valuables or explosives, and those that give no indication of their contents.

Needless to say, this principle is unsupported by either law or logic. Both Ross and Lafayette have rejected this position, ruling that it would be unreasonable to expect the police to make "fine and subtle" distinctions between items that may be searched and items that must be stored as a unit. See 456 U.S., at 822 ("a constitutional distinction between "worthy" and "unworthy" containers would be improper."). Resp's proposal also conflicts with the usual understanding of the policeman's role in an inven-

tory search, namely that an officer does not have discretion in deciding what to search and why. Finally, if the police are required to distinguish among containers, the Court arguably will have failed to provide "specific guidance to police and courts in this recurring situation." Belton, supra, 456 U.S., at 826 (Powell, J. concurring) (citation omitted).

D. Other Issues

Two other issues that require brief mention:

1. Decision below was based on state law. Resp suggests that, although the Colo. S. Ct. analyzed this case in terms of the 4th amendment, in fact the court simply affirmed the trial judge's decision to suppress the evidence under the state constitution. See Resp Brief at 3-4. There is no merit to this contention. The state court makes it clear that its opinion was based on federal constitutional law. See Cert Petn App. 50-51 ("Because we view the search here as violative of fourth amendment protections, we need not decide whether [the state] Constitution provides ... greater protections.").

2. Should have asked resp his preference. Both amici and resp vehemently argue that the police were obligated to ask resp his preference of how he wanted his van disposed of after the arrest. I hope resp does not spend much time on this point at oral argument. Even if the the argument had merit in general, it does not apply to this case. Resp was drunk; the police understandably would have been reluctant to relinquish their legal responsibility as caretaker of the van based solely on the preference of an intoxicated suspect.

III. SUMMARY AND RECOMMENDATION

The outcome of this case is strongly suggested by this Court's prior decisions. There is no doubt that the police had the right to inventory the contents of the van, and that in this case the search was properly conducted. Although the police had discretion whether to impound the vehicle, once the decision was made the officers followed established policy in opening the backpack and examining the contents.

Resp's attempts to limit the scope of inventory searches are unpersuasive. Despite the legitimate privacy interest in closed containers, Lafayette rejected the notion that this interest is sufficient to overcome the state's interest in protecting suspects, the property, and the police. There also is no merit to the suggestion that the police should be able to open containers only when they appear to contain valuables or dangerous devices. An inventory search should be routine and non-discretionary to the extent possible, a goal that is inconsistent with the requirement that the police draw subtle distinctions.

I recommend that the decision of the Colorado Supreme Court be reversed, and the case remanded for further proceedings.

Notes 10/20 L.F.P.

85-889 Colo. v. Bertine (S/Ct Colo.)

Had stopped Van & arrested driver for drunk driving

Police opened a closed container found inside a van (auto) & found cocaine, etc. The van had been stopped for speeding & erratic driving. Driver was drunk, & taken into custody. ~~After driver had been~~ Driver was removed (taken to Police station), and the van impounded as permitted by City ordinance; tow-truck called.

Before truck arrived, police conducted an inventory of the items inside the van. Police Dept. Regs., when a vehicle was used in the commission of a crime (drunk driving & speeding), authorize — as one option — a "detailed inventory".

During the inventory, cocaine was found in closed container.

Colo. suppressed the evidence.

TC found City's procedures were followed. Also "not pretextual"

My tentative view: Reverse

Under Opperman & Lafayette (search at station house), the inventory search was lawful. Colo. T.C. found search was made in good faith & was not pretextual.

State interests are substantial: (1) to protect suspect's prop.; (2) to protect police from fraudulent claims of theft; & (3) to ensure that the vehicle & its contents included nothing dangerous.

The reasoning of Belton & Ross is consistent with Reversal — the cases are not controlling

85-889 COLORADO v. BERTINE

Argued 11/5/86

Haviel (Dist. atty - Boulder Colo)

~~Direct~~

50'c asked why Belton was not relied on. Counsel answered that here the search occurred 15 ~~min~~ minutes after arrest, & Resp ~~had~~ had been taken away.

50'c not sure as to City's Regulations w/r to Inventory Search

L. Addair (Resp) (defended Resp in cases below)

Conceded validity of opening the back pack - but not the closed containers w/in it.

Rev 7-2

No. 85-889 Colorado v. Bertine Conf. 11/7/86

The Chief Justice Rev.

Controlled by Opperman + Lafayette

Resp. argues that police should have requested a "waiver" by the owner of any claims. Then in written argument-

Justice Brennan Aff'm

Even under Opperman, police have had too much discretion. Police had no instructions as to inventory. Cited

Justice White Rev.

Agree with C J.

"Officers could have done this on the spot."

If search had been made concurrently with the arrest, Belton would apply

Justice Marshall Aff in

~~Opp~~ Opposed to all inventories searches. Agree with W J B.

Justice Blackmun Rev.

Lafayette controls

Justice Powell Rev.

See my notes.

Opperman & Lafayette control.

Search here not protected.

JUSTICE STEVENS Rev. (tentative)

Inclined to agree that Lafayette controls

Troublesome area.

Susp. that arrest was not pretextual

Procedures were loose

JUSTICE O'CONNOR Rev.

Search would have been valid under Belton but. State did not raise issue.

If the Boulder procedure had been argued, then could be make a difference. Procedures were inadequate

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JUSTICE SCALIA Rev.

Procedures were OK.

Search not pretextual

Not clear how one writes procedures

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

From: **The Chief Justice**

Circulated: 12/1/86

Recirculated: _____

Reviewed 12/2 Join

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-889

COLORADO, PETITIONER *v.* STEVEN LEE BERTINE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

[December ——, 1986]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

On February 10, 1984, a police officer in Boulder, Colorado arrested petitioner Steven Lee Bertine for driving while under the influence of alcohol. After Bertine was taken into custody and before the arrival of a tow truck to take Bertine's van to an impoundment lot,[1] a backup officer inventoried the contents of the van. The officer opened a closed backpack in which he found controlled substances, cocaine paraphernalia, and a large amount of cash. Bertine was subsequently charged with driving while under the influence of alcohol, unlawful possession of cocaine with intent to dispense, sell, and distribute, and unlawful possession of methaqualone. We are asked to decide whether the Fourth Amendment prohibits the State from proving these charges with the evidence discovered during the inventory of Bertine's van. We hold that it does not.

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[1] Section 7-7-2(a)(4) of the Boulder Rev. Code authorizes police officers to impound vehicles when drivers are taken into custody. Section 7-7-2(a)(4) provides:

"A peace officer is authorized to remove or cause to be removed a vehicle from any street, parking lot, or driveway when:

. . . .

(4) The driver of the vehicle is taken into custody by the police department." Boulder Rev. Code § 7-7-2(a)(4)(1981).

The backup officer inventoried the van in accordance with local police procedures, which require a detailed inspection and inventory of impounded vehicles. He found the backpack directly behind the front seat of the van. Inside the pack, the officer observed a nylon bag containing metal canisters. Opening the canisters, the officer discovered that they contained respectively cocaine, methaqualone tablets, cocaine paraphernalia, and $700 dollars in cash. In an outside zippered pouch of the backpack, he also found $210 dollars in cash in a sealed envelope. After completing the inventory of the van, the officer had the van towed to an impound lot and brought the backpack, money, and contraband to the police station.

After Bertine was charged with the offenses described above, he moved to suppress the evidence found during the inventory search on the ground, *inter alia*, that the search of the closed backpack and containers exceeded the permissible scope of such a search under the Fourth Amendment. The Colorado trial court ruled that probable cause supported Bertine's arrest and that the police officers had made the decisions to impound the vehicle and to conduct a thorough inventory search in good faith. Although noting that the inventory of the vehicle was performed in a "somewhat slipshod" manner, the District Court concluded that "the search of the backpack was done for the purpose of protecting the owner's property, protection of the police from subsequent claims of loss or stolen property, and the protection of the police from dangerous instrumentalities." Joint app. 81–83. The court observed that the standard procedures for impounding vehicles mandated "the opening of containers and the listing of [their] contents." *Id.*, at 81. Based on these findings, the court determined that the inventory search did not violate Bertine's rights under Fourth Amendment of the United States Constitution. *Id.*, at 83. The court, never-

theless, granted Bertine's motion to suppress, holding that the inventory search violated the Colorado Constitution.

On the State's interlocutory appeal, the Supreme Court of Colorado affirmed. *People* v. *Bertine*, 706 P. 2d 411 (Colo. 1985). In contrast to the District Court, however, the Colorado Supreme Court premised its ruling on the United States Constitution. The court recognized that in *South Dakota* v. *Opperman*, 428 U. S. 364 (1986), we had held inventory searches of automobiles to be consistent with the Fourth Amendment, and that in *Illinois* v. *Lafayette*, 462 U. S. 640 (1983), we had held that the inventory search of personal effects of an arrestee at a police station were also permissible under that Amendment. The Supreme Court of Colorado felt, however, that our decisions in *Arkansas* v. *Sanders*, 442 U. S. 753 (1979), and *United States* v. *Chadwick*, 443 U. S. 1 (1977), holding searches of closed trunks and suitcases to violate the Fourth Amendment, meant that *Opperman* and *Lafayette* did not govern this case.[2]

We granted certiorari to consider the important and recurring question of federal law decided by the Colorado Supreme Court.[3] 475 U. S. —— (1986). As that court recognized,

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[2] Two Justices dissented from the majority opinion, arguing that *South Dakota* v. *Opperman*, 428 U. S. 364 (1976), and *Illinois* v. *Lafayette*, 462 U. S. 640 (1983), compel the conclusion that the inventory search of the backpack found in Bertine's van was permissible under the Fourth Amendment.

[3] Since our decision in *South Dakota* v. *Opperman*, 428 U. S. 364 (1976), several courts have confronted the issue whether police may inventory the contents of containers found in vehicles taken into police custody. See, *e. g.*, *United States* v. *Griffin*, 729 F. 2d 475 (CA7) (upholding inventory search of package found in paper bag), cert. denied, 469 U. S. 830 (1984); *United States* v. *Bloomfield*, 594 F. 2d 1200 (CA8 1979) (affirming suppression of evidence found in closed knapsack); *People* v. *Braash*, 122 Ill. App. 3d 747, 78 Ill. Dec. 67, 461 N. E. 2d 651 (1984) (upholding inventory of paper bag); *People* v. *Gonzalez*, 62 N. Y.2d 386, 477 N. Y.S. 2d 103, 465 N. E. 2d 823 (1984) (upholding inventory of paper bag); *Boggs* v. *Commonwealth*, 229 Va. 501, 331 S. E. 2d 407 (1985) (upholding inventory of boxes and pouch found in bag), cert. denied, 475 U. S. —— (1986).

inventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment. See *Lafayette*, *supra*, at 643; *Opperman*, *supra*, at 367–376. The policies behind the warrant requirement are not implicated in the noninvestigative context of an inventory search, *Opperman*, 428 U. S., at 370, n. 5, nor is the related concept of probable cause. "The standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures." *Ibid.*; see also *United States* v. *Chadwick*, 433 U. S. 1, 10, n. 5 (1977). For these reasons, the Colorado Supreme Court's reliance on *Arkansas* v. *Sanders*, 442 U. S. 753 (1979), and *United States* v. *Chadwick*, *supra*, was incorrect. Both of these cases concerned searches solely for the purpose of investigating criminal conduct, with the validity of the searches therefore dependent on the application of the probable cause and warrant requirements of the Fourth Amendment.

The appropriate focus of inquiry for inventory searches is, by contrast, the reasonableness requirement of that Amendment. In *Opperman*, this Court assessed the reasonableness of an inventory search of the glove compartment in an abandoned automobile impounded by the police. We found that inventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger. In light of these strong governmental interests and the diminished expectation of privacy in an automobile, we upheld the search. In reaching this decision, we observed that our cases accorded deference to police caretaking procedures designed to secure and protect vehicles and their contents within police custody. See *Cooper* v. *California*, 386 U. S. 58, 61–62 (1967); *Harris* v. *United States*, 390 U. S. 234, 236 (1968); *Cady* v. *Dombrowski*, 413 U. S. 433, 447–448 (1973).[4]

[4] The Colorado Supreme Court correctly stated that *Opperman* did not address the question whether the scope of an inventory search may extend

In our more recent decision, *Lafayette*, a police officer conducted an inventory search of the contents of a shoulder bag in the possession of an individual being taken into custody. In deciding whether this search was reasonable, we recognized that the search served legitimate governmental interests similar to those identified in *Opperman*. We determined that those interests outweighed the individual's Fourth Amendment interests and upheld the search.

In the present case, as in *Opperman* and *Lafayette*, there was no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation. In addition, the governmental interests justifying the inventory searches in *Opperman* and *Lafayette* are nearly the same as those which obtain here. In each case, the police were potentially responsible for the property taken into their custody. By securing the property, the police protected the property from unauthorized interference. Knowledge of the precise nature of the property helped guard against claims of theft, vandalism, or negligence. Such knowledge also helped to avert any danger to police or others that may have been posed by the property.

The Supreme Court of Colorado opined that *Lafayette* was not controlling here because there was no danger of introducing contraband or weapons into a jail facility. Our opinion in *Lafayette*, however, did not suggest that the station-house setting of the inventory search was critical to our holding in that case. Both in the present case and in *Lafayette*, the common governmental interests described above were served by the inventory searches.

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to closed containers located in the interior of an impounded vehicle. We did note, however, that "'when the police take custody of any sort of container [such as] an automobile . . . it is reasonable to search the container to itemize the property to be held by the police.'" 428 U. S., at 371 (quoting *United States* v. *Gravitt*, 484 F. 2d 375, 378 (CA5 1973), cert. denied, 414 U. S. 1135 (1974)).

The Supreme Court of Colorado also expressed the view that the search in this case was unreasonable because secure facilities for storing Bertine's van were available and Bertine himself could have been offered the opportunity to make other arrangements for the safekeeping of his property. While such a procedure would undoubtedly have been possible, we said in *Lafayette*:

> "[t]he real question is not what 'could have been achieved,' but whether the Fourth Amendment *requires* such steps . . . The reasonableness of any particular activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." *Lafayette*, 462 U. S., at 647 (emphasis in original).

See *Cady* v. *Dombrowski*, 413 U. S. 433, 447 (1973); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 557, n. 12 (1976). We conclude that here, as in *Lafayette*, reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.

The Supreme Court of Colorado also thought it necessary to require that police, before inventorying a container, weigh the strength of the individual's privacy interest in the container against the possibility that the container might serve as a repository for dangerous or valuable items. We think that such a requirement is contrary to our decisions in *Opperman* and *Lafayette*, and by analogy to our decision in *United States* v. *Ross*, 456 U. S. 798 (1982):

> "Even if less intrusive means existed of protecting some particular types of property, it would be unreasonable to expect police officers in the everyday course of business to make fine and subtle distinctions in deciding which containers or items may be searched and which must be sealed as a unit." *Lafayette*, *supra*, at 648.

> "When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." *United States* v. *Ross*, *supra*, at 821.

We reaffirm these principles here: "'[a] single familiar standard is essential to guide police officers, who have only limited time and experience to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" See *Lafayette*, 462 U. S., at 648 (quoting *New York* v. *Belton*, 453 U. S. 454, 458 (1981)).

Bertine finally argues that the inventory search of his van was unconstitutional because departmental regulations gave the police officers discretion to choose between impounding his van and parking and locking it in a public parking place. The Supreme Court of Colorado did not rely on this argument in reaching its conclusion, and we reject it. Which of two or more reasonable procedures embodied in departmental regulations are followed in any given case must rest primarily in the judgment of the officers on the scene who are familiar with the operation of the regulations.

While both *Opperman* and *Lafayette* are distinguishable from the present case on their facts, we think that the principles enunciated in these cases govern the present one. The judgment of the Supreme Court of Colorado is therefore

Reversed.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 1, 1986

Re: No. 85-889-Colorado v. Bertine

Dear Chief:

In due course I will circulate a dissent in this one.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

December 2, 1986

85-889 Colorado v. Bertine

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 WM. J. BRENNAN, JR.

December 2, 1986

No. 85-889

Colorado v. Bertine

Dear Chief,

I shall await the dissent in the above.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 4, 1986

No. 85-889 Colorado v. Bertine

Dear Chief,

Please join me. I may add a few thoughts by way of concurrence.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE ANTONIN SCALIA

December 5, 1986

Re: No. 85-889 - Colorado v. Bertine

Dear Chief,

I would be pleased to join your proposed opinion, but hope you will consider the following suggestions:

Page 4, Line 20:

Delete first sentence of first full paragraph and replace with: "By contrast, an inventory search may be "reasonable" under the Fourth Amendment even though it is not conducted pursuant to warrant based upon probable cause."

Page 6, Line 3:

Replace the first full paragraph with: "The Supreme Court of Colorado also expressed the view that the search in this case was unreasonable because Bertine's van was towed to a secure, lighted facility and because Bertine himself could have been offered the opportunity to make other arrangements for the safekeeping of his property. But the security of the storage facility does not completely eliminate the need for inventorying; the police may still wish to protect themselves or the owners of the lot against false claims of theft or dangerous instrumentalities. And while giving Bertine an opportunity to make alternate arrangements would undoubtedly have been possible, ..."

Page 7, Line 17

Replace second to last full paragraph with: "Bertine finally argues that the inventory search of his van was unconstitutional because departmental regulations gave the police officers discretion to choose between impounding his van and parking and locking it in a public parking place. The Supreme Court of Colorado did not rely on this argument, and we reject it. Nothing in Opperman or LaFayette prohibits the exercise of police discretion; rather, those cases imply only that whatever discretion is exercised be based upon something other than suspicion of evidence of criminal activity. Here, the discretion afforded the Boulder police is exercised in light of two factors

unrelated to suspicion of contraband: the proximity of public parking and the risk of damage or vandalism."

The last of these in particular seems to me of great importance.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 8, 1986

No. 85-889 Colorado v. Bertine

Dear Chief,

I have joined your opinion in this case and indicated I might add something by way of concurrence. Harry and Nino have each requested changes. Perhaps you can find a way to satisfy both of their requests although they overlap in part. My purpose in writing you is to say, as one who has joined you, that I have no objection to their requests. If you were to add something along the lines suggested by Harry concerning standardized police procedures, I would see no need to write a separate concurrence.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

December 9, 1986

Re: No. 85-889 Colorado v. Bertine

Dear Harry and Nino,

I have incorporated verbatim Nino's first and second changes proposed in his letter of December 5th, and combined what seems to me the substance of the third suggestion along with the second suggestion contained in Harry's letter of December 5th. I have adopted only part of the first of Harry's two suggestions because the part I don't want to adopt goes further than our cases go, or I would go, in confining inventory searches. I think these searches are properly confined by requiring standardized procedures and limiting discretion to factors which do not depend on suspicion of evidence of criminal activity. But I do not think that all discretion must or can be taken away from police officers when they conduct inventory searches, so long as a decision between impounding the van and parking and locking it in a public place is not based upon impermissible criteria such as suspicion of criminal activity.

Sincerely,

Justice Blackmun
Justice Scalia

cc: The Conference

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

CHAMBERS OF
JUSTICE ANTONIN SCALIA

December 10, 1986

Re: No. 85-889 - Colorado v. Bertine

Dear Chief,

I appreciate your accommodations, and am pleased to join your opinion.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 11, 1986

Re: 85-889 - Colorado v. Bertine

Dear Chief:

Because I was troubled about this case, I decided to wait to see what is written in dissent before finally casting my vote. I must say, however, that I presently expect to join the opinion that you have circulated.

Respectfully,

John

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 11, 1986

Re: No. 85-889, Colorado v. Bertine

Dear Chief:

Although I am writing a brief separate concurrence, I join your opinion for the Court.

Sincerely,

Harry

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 19, 1986

No. 85-889 Colorado v. Bertine

Dear Harry,

Please join me in your concurring opinion.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

December 20, 1986

85-889 Colorado v. Bertine

Dear Harry:

Please add my name to your concurring opinion.

Sincerely,

Justice Blackmun

lfp/ss

cc: The Conference

Sally

December 20, 1986

To: Justice Powell

From: Andy

Re: Colorado v. Bertine, No. 85-889

Justice Marshall's dissent has emphasized (effectively but imprudently, I think) that the police in this case had more discretion that the Court's opinion suggests. Because I think it is important to re-affirm our commitment to this part of the "inventory search" exception, I recommend that you join Justice Blackmun's concurring opinion. I note that Justice O'Connor already has done so. I think that this would be consistent with your decision in Opperman, and also would preserve flexibility for later cases.

Dear Harry

Please add my name to your concurring op.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 29, 1986

No. 85-889

Colorado v. Bertine

Dear Thurgood,

Please join me in your dissent in the above.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 29, 1986

Re: 85-889 - Colorado v. Bertine

Dear Chief:

Please join me.

Respectfully,

JPS

lfm

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 29, 1986

Re: 85-889 - Colorado v. Bertine

Dear Chief:

Please join me.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

85-889 Colorado v. Bertine (Andy)

CJ for the Court 11/17/86
1st draft 12/1/86
2nd draft 12/4/86
3rd draft 12/10/86
4th draft 1/6/87
Joined by JPS 12/1/86
WHR 12/2/86
SOC 12/4/86
AS 12/10/86
HAB 12/10/86
JPS 12/29/86

HAB concurring
1st draft 12/11/86
2nd draft 12/30/86
Joined by SOC 12/19/86
LFP 12/20/86

TM dissenting
1st draft 12/18/86
2nd draft 12/30/86
Joined by WJB 12/29/86

TM will dissent 12/1/86
WJB awaiting dissent 12/2/86
SOC may write a concurrence 12/4/86