April 25, 1983

Re: 81-430 - Illinois v. Gates

Dear Bill,

I will write separately in this case.

Sincerely,

Byrn

Justice Rehnquist

Copies to the Conference
cpm
JUSTICE POWELL, concurring.

I join the opinion of the Court as I think it is helpful to clarify the considerable confusion that has arisen - as illustrated by this case - in the application of Aquilar v. Texas, 278 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). I agree that the appropriate test, one familiar where common sense judgment is so essential, is the "totality of the circumstances analysis that traditionally has informed probable cause determinations". Ante, at 23.

I add, however, that this is a particularly easy case - at least for me. I could decide the case on the authority of Draper v. United States, 358 U.S. 307 (1959),
a decision that emphasized that corroboration of an
informant's "tip" often can be decisive. The anonymous
informer's letter received by the Bloomingdale police
department was corroborated in far too many significant
details to leave any serious doubt as to its basic
authenticity. See ante, at 10. The coordinated
investigative efforts of Detective Mader and the DEA merit
commendation.
April 28, 1983

81-430 Illinois v. Gates

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist
1fp/ss
cc: The Conference
May 11, 1983

Re: No. 81-430-Illinois v. Gates

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

T.M.

Justice Brennan

cc: The Conference
May 25, 1983

Re: No. 81-430, Illinois v. Gates

Dear Bill:

I join.

Regards,

Justice Rehnquist

Copies to the Conference
Re: No. 81-430 - Illinois v. Gates

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

cc: The Conference
The Way We See Justice

We don't like it when the police engage in warrantless raids, unjustified searches or stationhouse beatings—even if such official lawlessness produces solid evidence of criminality. We don't like it when an obviously guilty felon is let go because of some technical flaw in the way the evidence against him was obtained.

As a result, most of us are of two minds concerning the judicial principle that makes illegally obtained evidence inadmissible in court. That two-mindedness apparently extends all the way to the U.S. Supreme Court, which has agreed to take a second look at a case in which a bad warrant turned up good evidence. The fact that the court will take up the case again suggests that it may be on its way to a compromise on the vexing question of the "exclusionary rule." The rule, also known as the suppression doctrine, has applied to federal criminal cases since a 1914 Supreme Court decision. In a 1961 ruling, it was extended to state cases. Its rationale is clear enough: that law enforcement officials should not be rewarded (with convictions) for violating the Fourth Amendment guarantee against unreasonable searches and seizures or the Fifth Amendment right of a suspect not to be required to testify against himself.

The rule seems reasonable in some cases. If an officer raids your home on a whim and finds evidence of criminal activity; if the police stop you on the street and search you because they don't like your attitude; if they suspect that you have been involved in a crime and proceed to torture you until you point them to the evidence they weren't able to discover on their own, you'd likely think it wrong that they should be able to use the evidence against you in court—even if it turned out to be reliable evidence.

But suppose the officer was acting in good faith and didn't know that the evidence was unlawfully obtained until the Supreme Court, perhaps in a split decision, told him so. Should the apparently guilty suspect be declared innocent?

That is pretty much what happened in Illinois v. Gates, the 1978 case the court agreed last week to rehear. Police in Bloomington, Ill., got an anonymous tip that Lance and Sue Gates were preparing to make a major narcotics deal in Florida. The officers checked the information, confirmed part of it, obtained a search warrant and raided the couple's home. There they allegedly found weapons, drug paraphernalia, a quantity of cocaine and 350 pounds of marijuana. The Illinois court barred the evidence on the ground that the warrant had been obtained on insufficient grounds—the anonymous tip. The state appealed the case, arguing that the police were acting in the good-faith belief that the warrant was valid. The Supreme Court, which first pushed that argument aside, now says it is willing to hear it.

Chief Justice Warren Burger, one of the six justices who voted to rehear the case (the other three noted a strong dissent), has been arguing since his days as a federal judge that the exclusionary rule needs to be modified. Maybe now it will be, perhaps along the lines of legislation proposed by the Reagan administration—that evidence should be admitted if the officers who obtained it were acting in the "reasonable and good-faith belief" that their actions were lawful.

In coldly practical terms, it probably won't make much difference. Only a handful of cases are thrown out as a result of the exclusionary rule (though that handful tend to be highly publicized). Few criminals take the exclusionary rule into account when deciding whether to commit a crime. And few officers would be tempted to induce coerced confessions as a result of common-sense modification of the rule.

The major effect of modification would be in the public perception of justice—an important consideration all by itself.
Illinois v. Gates

WHR for the Court
1st draft 4/11/83
2nd draft 4/22/83
3rd draft 5/17/83
4th draft 6/1/83
Joined by CJ, HAB, LFP, WHR

WJB dissent
1st draft 5/11/82
2nd draft 6/2/83
Joined by TM

BRW concurring in the judgment
2nd draft 6/3/83

JPS dissent
1st draft 4/20/82
2nd draft 4/29/83
3rd draft 5/6/83
Joined by WJB