Hawkeye State

NIX v. WILLIAMS

SUPREME COURT OF THE UNITED STATES
467 U.S. 431
June 11, 1984
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Truly one of the saddest set of facts we will see.

OPINIONS: Chief Justice BURGER…We granted certiorari to consider whether, at respondent Williams' **second murder trial in state court**, evidence pertaining to the discovery and condition of the victim's body was properly admitted on the ground that **it would ultimately or inevitably have been discovered even if no violation of any constitutional or statutory provision had taken place.**

On December 24, 1968, **10-year-old Pamela Powers** disappeared from a YMCA building in Des Moines, Iowa, where she had accompanied her parents to watch an athletic contest. Shortly after she disappeared, Williams was seen leaving the YMCA carrying a large bundle wrapped in a blanket; a 14-year-old boy who had helped Williams open his car door reported that he had seen "**two legs in it and they were skinny and white**."

Williams' car was found the next day 160 miles east of Des Moines in Davenport, Iowa. Later several items of clothing belonging to the child, some of Williams' clothing, and an army blanket like the one used to wrap the bundle that Williams carried out of the YMCA were found at a rest stop on Interstate 80 near Grinnell, between Des Moines and Davenport. A warrant was issued for Williams' arrest.

Police surmised that Williams had left Pamela Powers or her body somewhere between Des Moines and the Grinnell rest stop where some of the young girl's clothing had been found. On December 26, the Iowa Bureau of Criminal Investigation initiated a large-scale search. Two hundred volunteers divided into teams began the search 21 miles east of Grinnell, covering an area several miles to the north and south of Interstate 80. They moved westward from Poweshiek County, in which Grinnell was located, into Jasper County. Searchers were instructed to check all roads, abandoned farm buildings, ditches, culverts, and any other place in which the body of a small child could be hidden.

Meanwhile, Williams surrendered to local police in Davenport, where he was promptly arraigned. Williams contacted a Des Moines attorney who arranged for an attorney in Davenport to meet Williams at the Davenport police station. **Des Moines police informed counsel they would pick Williams up in Davenport and return him to Des Moines without questioning**

him. Two Des Moines detectives then drove to Davenport, took Williams into custody, and proceeded to drive him back to Des Moines.

During the return trip, one of the policemen, Detective Leaming, began a conversation with Williams, saying:

> "I want to give you something to think about while we're traveling down the road …They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is…and if you get a snow on top of it you yourself may be unable to find it. And since we will be going right past the area [where the body is] on the way into Des Moines, I feel that we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas [E]ve and murdered…[A]fter a snow storm [we may not be] able to find it at all."

Leaming told Williams he knew the body was in the area of Mitchellville—a town they would be passing on the way to Des Moines. He concluded the conversation by saying "I do not want you to answer me…Just think about it…"

Later, as the police car approached Grinnell, Williams asked Leaming whether the police had found the young girl's shoes. After Leaming replied that he was unsure, Williams directed the police to a point near a service station where he said he had left the shoes; they were not found. As they continued to drive to Des Moines, Williams asked whether the blanket had been found and then directed the officers to a rest area in Grinnell where he said he had disposed of the blanket; they did not find the blanket. At this point Leaming and his party were joined by the officers in charge of the search. As they approached Mitchellville, Williams, without any further conversation, **agreed to direct the officers to the child's body**.

The officers directing the search had called off the search at 3 p.m., when they left the Grinnell Police Department to join Leaming at the rest area. At that time, one search team near the Jasper County-Polk County line was only two and one-half miles from where Williams soon guided Leaming and his party to the body. The child's body was found next to a culvert in a ditch beside a gravel road in Polk County, about two miles south of Interstate 80, and essentially within the area to be searched.

First Trial

In February 1969 Williams was indicted for first-degree murder. Before trial in the Iowa court, his counsel moved to suppress evidence of the body and all related evidence including the condition of the body as shown by the autopsy. The ground for the motion was that such evidence was the "fruit" or product of Williams' statements made **during the automobile ride** from Davenport to Des Moines and prompted by Leaming's statements. The motion to suppress was denied.

The jury found Williams guilty of first-degree murder; the judgment of conviction was affirmed by the Iowa Supreme Court. Williams then sought release on habeas corpus in the United States District Court for the Southern District of Iowa. That court concluded that the evidence in

question had been wrongly admitted at Williams' trial; a divided panel of the Court of Appeals for the Eighth Circuit agreed.

We granted certiorari and a divided Court affirmed, holding that Detective Leaming had obtained incriminating statements from Williams by what was viewed as interrogation in violation of his right to counsel. **This Court's opinion noted, however, that although Williams' incriminating statements could not be introduced into evidence at a second trial, evidence of the body's location and condition "might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams."**

Second Trial

At Williams' second trial in 1977 in the Iowa court, the prosecution did not offer Williams' statements into evidence, nor did it seek to show that Williams had directed the police to the child's body. However, **evidence of the condition of her body as it was found, articles and photographs of her clothing, and the results of post mortem medical and chemical tests on the body were admitted**. **The trial court concluded that the State had proved by a preponderance of the evidence that, if the search had not been suspended and Williams had not led the police to the victim, her body would have been discovered "within a short time" in essentially the same condition as it was actually found.** The trial court also ruled that if the police had not located the body, "the search would clearly have been taken up again where it left off, given the extreme circumstances of this case and the body would have been found in short order."

In finding that the body would have been discovered in essentially the same condition as it was actually found, the court noted that freezing temperatures had prevailed and tissue deterioration would have been suspended. The challenged evidence was admitted and the jury again found Williams guilty of first-degree murder; he was sentenced to life in prison.

On appeal, the Supreme Court of Iowa again affirmed. That court held that there was in fact a "**hypothetical independent source**" exception to the exclusionary rule:

> **"After the defendant has shown unlawful conduct on the part of the police, the State has the burden to show by a preponderance of the evidence that (1) the police did not act in bad faith for the purpose of hastening discovery of the evidence in question, and (2) that the evidence in question would have been discovered by lawful means."**

As to the first element, the Iowa Supreme Court, having reviewed the relevant cases, stated:

> "The issue of the propriety of the police conduct in this case, as noted earlier in this opinion, has caused the closest possible division of views in every appellate court which has considered the question. In light of the legitimate disagreement among individuals well versed in the law of criminal procedure who were given the opportunity for calm deliberation, it cannot be said that the actions of the police were taken in bad faith."

The Iowa court…concluded that the State had shown by a preponderance of the evidence that, even if Williams had not guided police to the child's body, it would inevitably have been found by lawful activity of the search party before its condition had materially changed.

In 1980 Williams renewed his attack on the state-court conviction by seeking a writ of habeas corpus in the United States District Court for the Southern District of Iowa. The District Court conducted its own independent review of the evidence and concluded, as had the state courts, that the body would inevitably have been found by the searchers in essentially the same condition it was in when Williams led police to its discovery. The District Court denied Williams' petition. The Court of Appeals…**reversed…**That court assumed, without deciding, that there is an inevitable discovery exception to the exclusionary rule and that the Iowa Supreme Court correctly stated that exception to require proof that the police did not act in bad faith and that the evidence would have been discovered absent any constitutional violation. In reversing the District Court's denial of habeas relief, the Court of Appeals stated:

> "We hold that the State has not met the first requirement. It is therefore unnecessary to decide whether the state courts' finding that the body would have been discovered anyway is fairly supported by the record. It is also unnecessary to decide whether the State must prove the two elements of the exception by clear and convincing evidence, as defendant argues, or by a preponderance of the evidence, as the state courts held. The state trial court, in denying the motion to suppress, made no finding one way or the other on the question of bad faith. Its opinion does not even mention the issue and seems to proceed on the assumption—contrary to the rule of law later laid down by the Supreme Court of Iowa—that the State needed to show only that the body would have been discovered in any event. The Iowa Supreme Court did expressly address the issue…and a finding by an appellate court of a state is entitled to the same presumption of correctness that attaches to trial-court findings under 28 U.S.C. §2254(d)…We conclude, however, that the state Supreme Court's finding that the police did not act in bad faith is not entitled to the shield of §2254(d)…"

We granted the State's petition for certiorari and <u>we reverse</u>.

Perhaps we should review. The Supreme Court reversed Williams' first conviction and sent it back for a new trial, the Court holding that his illegally obtained incriminating **<u>statements</u>** should not have been admitted into evidence, but that at a second trial the location and condition of the body might be admissible if that evidence **<u>would have been discovered</u>** anyway. At the second trial, the Trial Judge concluded that the State proved by a **<u>preponderance</u>** of the evidence that if the search had not been suspended and Williams had not led police to the victim, her body would have been discovered anyway and, therefore, that evidence was allowed to be presented. The Supreme Court of Iowa affirmed the conviction, adopted the "inevitable discovery rule" and found that the police had not acted in bad faith. Williams then sought a writ of habeas corpus in Federal District Court which was denied.

The Court of Appeals reversed, holding that it was improper for the Iowa Supreme Court to first address the issue of bad faith and make a finding there --- that the issue of bad faith should have been addressed in the Trial Court and, because it was not, Williams was to be set free unless the State brought new charges to retry him "within 60 days." The United States Supreme Court granted certiorari from the Court of Appeals grant of habeas corpus relief which brings us to their reasoning and decision affirming the second conviction. It is the end of the road for Mr. Williams.

The Iowa Supreme Court correctly stated that the "vast majority" of all courts, both state and federal, recognize an inevitable discovery exception to the exclusionary rule. We are now urged to adopt and apply the so-called ultimate or inevitable discovery exception to the exclusionary rule.

Williams contends that evidence of the body's location and condition is "fruit of the poisonous tree," i.e., the "fruit" or product of Detective Leaming's plea to help the child's parents give her "a Christian burial," which this Court had already held equated to interrogation. He contends that admitting the challenged evidence violated the Sixth Amendment whether it would have been inevitably discovered or not. Williams also contends that, if the inevitable discovery doctrine is constitutionally permissible, it must include a threshold showing of police good faith.

The doctrine requiring courts to suppress evidence as the tainted "fruit" of unlawful governmental conduct had its genesis in *Silverthorne Lumber Co. v. United States*; there, the Court held that the exclusionary rule applies not only to the illegally obtained evidence itself, but also to other incriminating evidence derived from the primary evidence. The holding of *Silverthorne* was carefully limited, however, for the Court emphasized that such information does not automatically become "sacred and inaccessible."

"If knowledge of such facts is gained from an independent source, they may be proved like any others…"

Wong Sun v. United States (1963) extended the exclusionary rule to evidence that was the indirect product or "fruit" of unlawful police conduct, but there again the Court emphasized that evidence that has been illegally obtained need not always be suppressed, stating:

> "We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'"

The Court thus pointedly negated the kind of good-faith requirement advanced by the Court of Appeals in reversing the District Court.

Although *Silverthorne* and *Wong Sun* involved violations of the Fourth Amendment, the "fruit of the poisonous tree" doctrine has not been limited to cases in which there has been a Fourth

Amendment violation. The Court has applied the doctrine where the violations were of the Sixth Amendment, see *United States v. Wade*, as well as of the Fifth Amendment.

The core rationale consistently advanced by this Court for extending the exclusionary rule to evidence that is the fruit of unlawful police conduct has been that this admittedly drastic and socially costly course is needed to deter police from violations of constitutional and statutory protections. This Court has accepted the argument that the way to ensure such protections is to exclude evidence seized as a result of such violations notwithstanding the high social cost of letting persons obviously guilty go unpunished for their crimes. On this rationale, the prosecution is not to be put in a better position than it would have been in if no illegality had transpired.

By contrast, the derivative evidence analysis ensures that the prosecution is not put in a worse position simply because of some earlier police error or misconduct. The independent source doctrine allows admission of evidence that has been discovered by means wholly independent of any constitutional violation. That doctrine, although closely related to the inevitable discovery doctrine, does not apply here; Williams' statements to Leaming indeed led police to the child's body, but that is not the whole story. The independent source doctrine teaches us that the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred. **When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation**. There is a functional similarity between these two doctrines in that exclusion of evidence that would inevitably have been discovered would also put the government in a worse position, because the police would have obtained that evidence if no misconduct had taken place. Thus, while the independent source exception would not justify admission of evidence in this case, its rationale is wholly consistent with and justifies our adoption of the ultimate or inevitable discovery exception to the exclusionary rule.

It is clear that the cases implementing the exclusionary rule "begin with the premise that the challenged evidence is in some sense the product of illegal governmental activity." Of course, this does not end the inquiry. **If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means—here the volunteers' search—then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense.**

The requirement that the prosecution must prove the absence of bad faith, imposed here by the Court of Appeals, would place courts in the position of withholding from juries relevant and undoubted truth that would have been available to police absent any unlawful police activity. Of course, that view would put the police in a worse position than they would have been in if no unlawful conduct had transpired. And, of equal importance, <u>it wholly fails to take into account the enormous societal cost of excluding truth in the search for truth in the administration of justice</u>. Nothing in this Court's prior holdings supports any such formalistic, pointless, and punitive approach.

The Court of Appeals concluded…that if an absence-of-bad-faith requirement were not imposed, "the temptation to risk deliberate violations of the Sixth Amendment would be too great, and the deterrent effect of the Exclusionary Rule reduced too far." We reject that view. A police officer who is faced with the opportunity to obtain evidence illegally will rarely, if ever, be in a position to calculate whether the evidence sought would inevitably be discovered:

> "The concept of effective deterrence assumes that the police officer consciously realizes the probable consequences of a presumably impermissible course of conduct."

On the other hand, when an officer is aware that the evidence will inevitably be discovered, he will try to avoid engaging in any questionable practice. In that situation, there will be little to gain from taking any dubious "shortcuts" to obtain the evidence. Significant disincentives to obtaining evidence illegally—including the possibility of departmental discipline and civil liability—also lessen the likelihood that the ultimate or inevitable discovery exception will promote police misconduct. In these circumstances, the societal costs of the exclusionary rule far outweigh any possible benefits to deterrence that a good-faith requirement might produce.

Williams contends that because he did not waive his right to the assistance of counsel, the Court may not balance competing values in deciding whether the challenged evidence was properly admitted. He argues that, unlike the exclusionary rule in the Fourth Amendment context, the essential purpose of which is to deter police misconduct, the Sixth Amendment exclusionary rule is designed to protect the right to a fair trial and the integrity of the factfinding process. Williams contends that, when those interests are at stake, the societal costs of excluding evidence obtained from responses presumed involuntary are irrelevant in determining whether such evidence should be excluded. We disagree.

Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial. The Sixth Amendment right to counsel protects against unfairness by preserving the adversary process in which the reliability of proffered evidence may be tested in cross-examination. Here, however, Detective Leaming's conduct did nothing to impugn the reliability of the evidence in question—the body of the child and its condition as it was found, articles of clothing found on the body, and the autopsy. No one would seriously contend that the presence of counsel in the police car when Leaming appealed to Williams' decent human instincts would have had any bearing on the reliability of the body as evidence. Suppression, in these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of criminal justice.

Nor would suppression ensure fairness on the theory that it tends to safeguard the adversary system of justice. To assure the fairness of trial proceedings, this Court has held that assistance of counsel must be available at pretrial confrontations where "the subsequent trial cannot cure an otherwise one-sided confrontation between prosecuting authorities and the uncounseled defendant." *United States v. Ash*. Fairness can be assured by placing the State and the accused in the same positions they would have been in had the impermissible conduct not taken place. However, **if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the**

police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings. In that situation, the State has gained no advantage at trial and the defendant has suffered no prejudice. Indeed, suppression of the evidence would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any police misconduct. Williams' argument that inevitable discovery constitutes impermissible balancing of values is without merit…

The Court of Appeals did not find it necessary to consider whether the record fairly supported the finding that the volunteer search party would ultimately or inevitably have discovered the victim's body. However, three courts independently reviewing the evidence have found that the body of the child inevitably would have been found by the searchers. Williams challenges these findings, asserting that the record contains only the "post hoc rationalization" that the search efforts would have proceeded two and one-half miles into Polk County where Williams had led police to the body.

When that challenge was made at the suppression hearing preceding Williams' second trial, the prosecution offered the testimony of Agent Ruxlow of the Iowa Bureau of Criminal Investigation. Ruxlow had organized and directed some 200 volunteers who were searching for the child's body. The searchers were instructed "to check all the roads, the ditches, any culverts …If they came upon any abandoned farm buildings, they were instructed to go onto the property and search those abandoned farm buildings or any other places where a small child could be secreted." Ruxlow testified that he marked off highway maps of Poweshiek and Jasper Counties in grid fashion, divided the volunteers into teams of four to six persons, and assigned each team to search specific grid areas. Ruxlow also testified that, if the search had not been suspended because of Williams' promised cooperation, it would have continued into Polk County, using the same grid system. Although he had previously marked off into grids only the highway maps of Poweshiek and Jasper Counties, Ruxlow had obtained a map of Polk County, which he said he would have marked off in the same manner had it been necessary for the search to continue…

On this record it is clear that the search parties were approaching the actual location of the body, and we are satisfied, along with three courts earlier, that the volunteer search teams would have resumed the search had Williams not earlier led the police to the body and the body inevitably would have been found. The evidence asserted by Williams as newly discovered, i.e., certain photographs of the body and deposition testimony of Agent Ruxlow made in connection with the federal habeas proceeding, does not demonstrate that the material facts were inadequately developed in the suppression hearing in state court or that Williams was denied a full, fair, and adequate opportunity to present all relevant facts at the suppression hearing. The judgment of the Court of Appeals is reversed…

CONCURRENCE: Justice WHITE…I write separately only to point out that many of Justice Stevens' remarks are beside the point when it is recalled that *Brewer v. Williams*, was a 5-4 decision and that four Members of the Court, including myself, were of the view that Detective Leaming had done nothing wrong at all, let alone anything unconstitutional. Three of us observed: "To anyone not lost in the intricacies of the prophylactic rules of *Miranda v. Arizona*, the result in this case seems utterly senseless…" It is thus an unjustified reflection on Detective Leaming to say that he "decided to dispense with the requirements of law" or that he decided "to take procedural short-cuts instead of complying with the law." He was no doubt acting as many

competent police officers would have acted under similar circumstances and in light of the then-existing law. That five Justices later thought he was mistaken does not call for making him out to be a villain or for a lecture on deliberate police misconduct and its resulting costs to society.

CONCURRENCE: Justice STEVENS…The majority refers to the "societal cost" of excluding probative evidence. In my view, the more relevant cost is that imposed on society by police officers who decide to take procedural shortcuts instead of complying with the law. What is the consequence of the shortcut that Detective Leaming took when he decided to question Williams in this case and not to wait an hour or so until he arrived in Des Moines? The answer is years and years of unnecessary but costly litigation. Instead of having a 1969 conviction affirmed in routine fashion, the case is still alive 15 years later. Thanks to Detective Leaming, the State of Iowa has expended vast sums of money and countless hours of professional labor in his defense. That expenditure surely provides an adequate deterrent to similar violations; the responsibility for that expenditure lies not with the Constitution, but rather with the constable. Accordingly, I concur in the Court's judgment.

DISSENT: Justice BRENNAN/MARSHALL…In *Williams I*, we held that the respondent's state conviction for first-degree murder had to be set aside because it was based in part on statements obtained from the respondent in violation of his right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments. At the same time, we noted that, "[w]hile neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event."

To the extent that today's decision adopts this "inevitable discovery" exception to the exclusionary rule, it simply acknowledges a doctrine that is akin to the "independent source" exception first recognized by the Court in *Silverthorne Lumber Co. v. United States*. In particular, the Court concludes that unconstitutionally obtained evidence may be admitted at trial if it inevitably would have been discovered in the same condition by an independent line of investigation that was already being pursued when the constitutional violation occurred. As has every Federal Court of Appeals previously addressing this issue, I agree that in these circumstances the "inevitable discovery" exception to the exclusionary rule is consistent with the requirements of the Constitution.

In its zealous efforts to emasculate the exclusionary rule, however, the Court loses sight of the crucial difference between the "inevitable discovery" doctrine and the "independent source" exception from which it is derived. When properly applied, the "independent source" exception allows the prosecution to use evidence only if it was, in fact, obtained by fully lawful means. It therefore does no violence to the constitutional protections that the exclusionary rule is meant to enforce. The "inevitable discovery" exception is likewise compatible with the Constitution, though it differs in one key respect from its next of kin: specifically, the evidence sought to be introduced at trial has not actually been obtained from an independent source, but rather would have been discovered as a matter of course if independent investigations were allowed to proceed.

In my view, this distinction should require that the government satisfy a **heightened burden of proof** before it is allowed to use such evidence. The inevitable discovery exception necessarily implicates a hypothetical finding that differs in kind from the factual finding that precedes application of the independent source rule. To ensure that this hypothetical finding is narrowly confined to circumstances that are functionally equivalent to an independent source, and to protect fully the fundamental rights served by the exclusionary rule, I would require **clear and convincing evidence** before concluding that the government had met its burden of proof on this issue. Increasing the burden of proof serves to impress the factfinder with the importance of the decision and thereby reduces the risk that illegally obtained evidence will be admitted. Because the lower courts did not impose such a requirement, I would remand this case for application of this heightened burden of proof by the lower courts in the first instance. I am therefore unable to join either the Court's opinion or its judgment.

Justices Brennan and Marshall would send this case back for yet a third trial, not because the State failed to prove its case, but because the test of admissibility was not to their liking. Instead of the State having to prove by a **preponderance** (i.e., a "more likely than not" standard) that the admitted evidence would have been inevitably discovered, they would require the State to prove the same conclusion by **clear and convincing** evidence. Discuss.