

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

POWELL v. NEVADA

CERTIORARI TO THE SUPREME COURT OF NEVADA
No. 92-8841. Argued February 22, 1994—Decided March 30, 1994

Petitioner Powell was arrested on November 3, 1989, for felony child abuse. Not until November 7, however, did a magistrate find probable cause to hold him for a preliminary hearing. The child in question subsequently died of her injuries, and Powell was charged additionally with her murder. At the trial, the state prosecutor presented prejudicial statements Powell had made to the police on November 7. The jury found him guilty and sentenced him to death. On appeal, the Nevada Supreme Court, *sua sponte*, raised the question whether the 4-day delay in judicial confirmation of probable cause violated the Fourth Amendment, in view of *County of Riverside v. McLaughlin*, 500 U. S. 44, which held that a judicial probable cause determination must generally be made within 48 hours of a warrantless arrest, and that, absent extraordinary circumstances, a longer delay is unconstitutional. The state court decided that *McLaughlin* was inapplicable to Powell's case, because his prosecution commenced prior to the rendition of that decision.

Held: The Nevada Supreme Court erred in failing to recognize that *McLaughlin*'s 48-hour rule must be applied retroactively, for under *Griffith v. Kentucky*, 479 U. S. 314, 328, "a . . . rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, . . . not yet final" when the rule is announced. Although the 4-day delay here was presumptively unreasonable under *McLaughlin*, it does not necessarily follow that Powell must be set free or gain other relief. Several questions remain open for decision on remand, including the appropriate remedy for a delay in determining probable cause (an issue not resolved by *McLaughlin*), the consequence of Powell's failure to raise the federal question,

and whether introduction at trial of what Powell said on November 7 was ``harmless'' in view of a similar, albeit shorter, statement he made prior to his arrest. Pp. 4-6.

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108 Nev. 700, 838 P. 2d 921, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined.