

# The Burger Court Opinion Writing Database

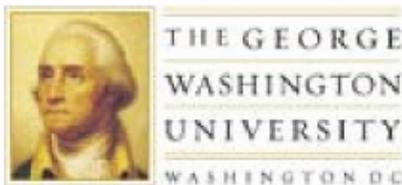
## *Gooding v. Wilson*

405 U.S. 518 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543  
December 17, 1971

*Janney  
Conference*

CHAMBERS OF  
THE CHIEF JUSTICE

No. 70-26 -- Gooding v. Wilson

MEMORANDUM TO THE CONFERENCE:

I have not assigned this case since I am in the minority. Justice Douglas was also in doubt. I question whether it should now be assigned and I request it be taken up again for discussion at our next Conference.

The total time devoted to it at our conference was barely ten minutes. It is a case of major importance, and I do not believe it has had adequate exploration.

Regards,

*W.S.B.*

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

7M  
Supreme Court of the United States  
Washington, D. C. 20543

December 20, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

No. 70-26 -- Gooding v. Wilson

Dear Bill:

I have your note on the above.

There was no recorded vote of your position after your comment on the initial call that you were "in doubt."

Here again there is no harm in writing, but if your position is now firmed up, I see no point in reviewing a Conference discussion. Indeed, I think it very likely this case will be reargued. I, for one, will not take part in overruling Chaplinsky, directly or indirectly, with a seven-member Court.

I will await Bill Brennan's writing.

Regards,

WRB

Mr. Justice Douglas

cc: The Conference

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

January 17, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE:

No. 70-26 -- Gooding v. Wilson

I suggest this case should be set for re-  
argument.

Regards,

W.S.D.

WJ

You have joined WJ

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

January 17, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

Re: No. 70-26 -- Gooding v. Wilson

Dear Bill:

You are quite right on the above. The vote was  
5 - 2 and hence it is not a candidate for reargument in  
that posture.

I wrote the memo at home based on recollection and  
did not check the vote sheets this morning before sending  
the memo.

On all the others, I am firm for reargument.

Regards,

WJ

Mr. Justice Brennan

Copies to the Conference

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 28, 1972

Re: No. 70-26 - Gooding v. Wilson

Dear Bill:

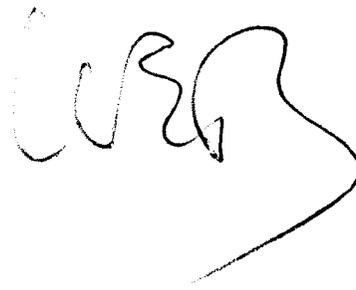
Friday I said I would recheck the above to see if we could get it out this week.

I had some dissenting comments not yet printed.

I will send them to the Printer today and it will be safe to set your case to come down Wednesday.

Regards,

Mr. Justice Brennan



Brennan  
02/28/72

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

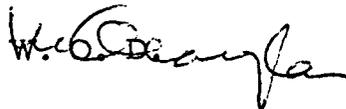
December 17, 1971

Dear Chief:

Re: No. 70-26 - Gooding v. Wilson

I have your memo in this case which indicates that I was in doubt. I really had no problem once I had worked my way through the tangled materials. As I remembered, it was five to two and I had a mental note to send it on to Bill Brennan to write.

Of course if you want to take it up at the next Conference it is all right with me. But if Bill Brennan in the meantime could write it out, it might help out the general situation.



The Chief Justice

cc: The Conference

8  
M

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 12, 1972

Dear Bill:

In No. 70-26 - Gooding v.

Wilson, please join me in your opinion.

ww  
W. O. D.

Mr. Justice Brennan

*Chief suggests  
reargument*

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 17, 1972

Dear Chief:

I vote against putting down  
for reargument the following cases:

No. 70-26 - Gooding v. Wilson  
No. 70-45 - U. S. v. Brewster  
No. 70-5061 - Kirby v. Illinois

*W*  
William O. Douglas

The Chief Justice

CC: The Conference

*Brennan*  
*0071*

B

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Regulated: 1-12-72

No. 70-26

Recirculated: \_\_\_\_\_

Millard Gooding, Warden,  
Appellant.  
v.  
Johnny C. Wilson. } On Appeal from the United  
States Court of Appeals  
for the Fifth Circuit.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellee was convicted in Superior Court, Fulton County, Georgia, on two counts of using opprobrious words and abusive language in violation of Georgia Code 26-6303 which provides: "Any person who shall, without provocation, use to or of another, and in the presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." Appellee appealed the conviction to the Supreme Court of Georgia on the ground, among others, that the statute violated the First and Fourteenth Amendments because vague and overbroad. The Georgia Supreme Court rejected that contention and sustained the conviction. *Wilson v. State*, 223 Ga. 531, 156 S. E. 2d 446 (1967). Appellee then sought federal habeas corpus relief in the District Court for the Northern District of Georgia. The District Court found that, because appellee had failed to exhaust his available state remedies as to the other grounds appellee relied on in attacking his conviction, only appellee's contention that § 26-6303 was facially unconstitutional was

NOT APPROVED BY FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

2

*Revised*

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: [unclear]

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

Recirculated: (1-15-72)

No. 70-26

Millard Gooding, Warden, }  
Appellant, } On Appeal from the United  
v. } States Court of Appeals  
Johnny C. Wilson. } for the Fifth Circuit.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellee was convicted in Superior Court, Fulton County, Georgia, on two counts of using opprobrious words and abusive language in violation of Georgia Code 26-6303, which provides: "Any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." Appellee appealed the conviction to the Supreme Court of Georgia on the ground, among others, that the statute violated the First and Fourteenth Amendments because vague and overbroad. The Georgia Supreme Court rejected that contention and sustained the conviction. *Wilson v. State*, 223 Ga. 531, 156 S. E. 2d 446 (1967). Appellee then sought federal habeas corpus relief in the District Court for the Northern District of Georgia. The District Court found that, because appellee had failed to exhaust his available state remedies as to the other grounds appellee relied on in attacking his conviction, only appellee's contention that § 26-6303 was facially unconstitutional was

REMOVED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

3

*Stylish changed  
v. See Page 7.*

To: The Chief Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
✓ Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

4th DRAFT

From: Brennan, J

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_  
Recirculated: 1-14-72

No. 70-26

Millard Gooding, Warden, }  
Appellant. } On Appeal from the United  
v. } States Court of Appeals  
Johnny C. Wilson. } for the Fifth Circuit.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellee was convicted in Superior Court, Fulton County, Georgia, on two counts of using opprobrious words and abusive language in violation of Georgia Code 26-6303, which provides: "Any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." Appellee appealed the conviction to the Supreme Court of Georgia on the ground, among others, that the statute violated the First and Fourteenth Amendments because vague and overbroad. The Georgia Supreme Court rejected that contention and sustained the conviction. *Wilson v. State*, 223 Ga. 531, 156 S. E. 2d 446 (1967). Appellee then sought federal habeas corpus relief in the District Court for the Northern District of Georgia. The District Court found that, because appellee had failed to exhaust his available state remedies as to the other grounds appellee relied on in attacking his conviction, only appellee's contention that § 26-6303 was facially unconstitutional was

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Brennan, J.

5th DRAFT

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Recirculated: 1-17-72

No. 70-26

Millard Gooding, Warden, }  
Appellant. } On Appeal from the United  
v. } States Court of Appeals  
Johnny C. Wilson. } for the Fifth Circuit.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellee was convicted in Superior Court, Fulton County, Georgia, on two counts of using opprobrious words and abusive language in violation of Georgia Code 26-6303, which provides: "Any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." Appellee appealed the conviction to the Supreme Court of Georgia on the ground, among others, that the statute violated the First and Fourteenth Amendments because vague and overbroad. The Georgia Supreme Court rejected that contention and sustained the conviction. *Wilson v. State*, 223 Ga. 531, 156 S. E. 2d 446 (1967). Appellee then sought federal habeas corpus relief in the District Court for the Northern District of Georgia. The District Court found that, because appellee had failed to exhaust his available state remedies as to the other grounds appellee relied on in attacking his conviction, only appellee's contention that § 26-6303 was facially unconstitutional was

193 6, 7, 8, 9, 10

Please join me  
HJ

B M See Key 7-8

You found

- To: The Chief Justice
- Mr. Justice Douglas
- Mr. Justice Stewart
- Mr. Justice White
- Mr. Justice Marshall
- Mr. Justice Blackmun
- Mr. Justice Powell
- Mr. Justice Rehnquist

6th DRAFT

From: Brennan, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

No. 70-26

Recirculated: 11/19/72

Millard Gooding, Warden, Appellant. v. Johnny C. Wilson.	}	On Appeal from the United States Court of Appeals for the Fifth Circuit.
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[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellee was convicted in Superior Court, Fulton County, Georgia, on two counts of using opprobrious words and abusive language in violation of Georgia Code 26-6303, which provides: "Any person who shall, without provocation, use to or of another, and in his presence, opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." Appellee appealed the conviction to the Supreme Court of Georgia on the ground, among others, that the statute violated the First and Fourteenth Amendments because vague and overbroad. The Georgia Supreme Court rejected that contention and sustained the conviction. *Wilson v. State*, 223 Ga. 531, 156 S. E. 2d 446 (1967). Appellee then sought federal habeas corpus relief in the District Court for the Northern District of Georgia. The District Court found that, because appellee had failed to exhaust his available state remedies as to the other grounds appellee relied on in attacking his conviction, only appellee's contention that § 26-6303 was facially unconstitutional was

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2  
M  
You have joined.  
See p. 17, 18, 19

To: The Chief  
Mr. Justice  
Mr. Justice  
Mr. Justice  
/ Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

7th DRAFT

From: L...

SUPREME COURT OF THE UNITED STATES

Circulat

Recircul 1-26-72

No. 70-26

Millard Gooding, Warden,  
Appellant,  
v.  
Johnny C. Wilson. } On Appeal from the United  
States Court of Appeals  
for the Fifth Circuit.

[January —, 1972]

Mr. JUSTICE BRENNAN delivered the opinion of the Court.

Appellee was convicted in Superior Court, Fulton County, Georgia, on two counts of using opprobrious words and abusive language in violation of Georgia Code 26-6303, which provides: "Any person who shall, without provocation, use to or of another, and in his presence, opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor." Appellee appealed the conviction to the Supreme Court of Georgia on the ground, among others, that the statute violated the First and Fourteenth Amendments because vague and overbroad. The Georgia Supreme Court rejected that contention and sustained the conviction. *Wilson v. State*, 223 Ga. 531, 156 S. E. 2d 446 (1967). Appellee then sought federal habeas corpus relief in the District Court for the Northern District of Georgia. The District Court found that, because appellee had failed to exhaust his available state remedies as to the other grounds appellee relied on in attacking his conviction, only appellee's contention that § 26-6303 was facially unconstitutional was

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3

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 12, 1972

70-26 - Gooding v. Wilson

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

2  
*You have also  
joined.*

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 19, 1972

Re: No. 70-26 - Gooding v. Wilson

Dear Bill:

Please join me, at least as long as the overbreadth doctrine is to survive.

Sincerely,

*Byron*

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 18, 1972

Re: No. 70-26 - Gooding v. Wilson

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES Blackmun, J.

No. 70-26

Circulated: 1/24/72

Recirculated: \_\_\_\_\_

Millard Gooding, Warden, }  
Appellant, } On Appeal from the United  
v. } States Court of Appeals  
Johnny C. Wilson. } for the Fifth Circuit.

[February —, 1972]

MR. JUSTICE BLACKMUN, dissenting.

It seems strange indeed that in this day a man may say to a police officer, who is attempting to restore access to a public building, "White son of a bitch, I'll kill you" and "You son of a bitch, I'll choke you to death," and say to an accompanying officer "You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces," and yet constitutionally cannot be prosecuted and convicted under a state statute which makes it a misdemeanor to "use to or of another, and in his presence, opprobrious words or abusive language, tending to cause a breach of the peace. . . ." This, however, is precisely what the Court pronounces as the law today.

The Supreme Court of Georgia, when the conviction was appealed, unanimously held the other way. *Wilson v. State*, 223 Ga. 531; 156 S. E. 2d 446 (1967). Surely any adult who can read—and I do not exclude this appellee-defendant from that category—should reasonably expect no other conclusion. The words of Georgia Code § 26-6303 are clear. They are also concise. They are not, in my view, overbroad or incapable of being understood. Except perhaps for the "big" word "opprobrious"—and no point is made of its bigness—any Georgia schoolboy would expect that this defendant's fighting and provocative words to the officers were cov-

5  
M

PP. 1, 4

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES Blackmun, J.

No. 70-26

Circulated: \_\_\_\_\_

Recirculated: 3/6/72

Millard Gooding, Warden,  
Appellant.  
v.  
Johnny C. Wilson.

On Appeal from the United  
States Court of Appeals  
for the Fifth Circuit.

[February —, 1972]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE joins, dissenting.

It seems strange indeed that in this day a man may say to a police officer, who is attempting to restore access to a public building, "White son of a bitch, I'll kill you" and "You son of a bitch, I'll choke you to death," and say to an accompanying officer "You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces," and yet constitutionally cannot be prosecuted and convicted under a state statute which makes it a misdemeanor to "use to or of another, and in his presence, opprobrious words or abusive language, tending to cause a breach of the peace. . . ." This, however, is precisely what the Court pronounces as the law today.

The Supreme Court of Georgia, when the conviction was appealed, unanimously held the other way. *Wilson v. State*, 223 Ga. 531; 156 S. E. 2d 446 (1967). Surely any adult who can read—and I do not exclude this appellee-defendant from that category—should reasonably expect no other conclusion. The words of Georgia Code § 26-6303 are clear. They are also concise. They are not, in my view, overbroad or incapable of being understood. Except perhaps for the "big" word "opprobrious"—and no point is made of its bigness—any Georgia schoolboy would expect that this defendant's fighting and provocative words to the officers were cov-

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