

# The Burger Court Opinion Writing Database

*Gustafson v. Florida*

414 U.S. 260 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



December 6, 1973

Re: 71-1669 - Gustafson v. Florida

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 5, 1973

Dear Thurgood:

Please join me in your dissent in  
71-1669, Gustafson v. Florida.

*W.O.D.*  
William O. Douglas

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 6, 1973

RE: No. 71-1669 Gustafson v. Florida

Dear Thurgood:

Please join me in your dissenting  
opinion in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1669

1st DRAFT  
Circulated: \_\_\_\_\_

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

James E. Gustafson, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Florida. Florida.

[November —, 1973]

MR. JUSTICE STEWART, concurring.

It seems to me that a persuasive claim might have been made in this case that the custodial arrest of the petitioner for a minor traffic offense violated his rights under the Fourth and Fourteenth Amendments. But no such claim has been made. Instead, the petitioner has fully conceded the constitutional validity of his custodial arrest. That being so, it follows that the incidental search of his person was also constitutionally valid. To hold otherwise would, as the Court makes clear in this case and in *United States v. Robinson, ante*, p. —, mark an abrupt departure from settled constitutional precedent.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 21, 1973

Re: No. 71-1669, Gustafson v. Florida

Dear Bill,

While I have written a brief concurring opinion, this will confirm that I also join your opinion for the Court.

Sincerely yours,

RG  
J

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 12, 1973

Re: No. 71-1669 - Gustafson v. Florida

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 13, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1669 -- Gustafson v. State of Florida

In due time I will circulate a separate opinion  
here.

*T. M.*

T. M.

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

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: DEC 4 1973

No. 71-1669

Recirculated:

James E. Gustafson, Petitioner, | On Writ of Certiorari to  
v. | the Supreme Court of  
State of Florida. | Florida.

{December 4, 1973}

MR. JUSTICE MARSHALL, dissenting.

I respectfully dissent for the reasons stated in my opinion in *United States v. Willie Robinson, Jr., ante*, at \_\_\_\_\_. The facts show that after arresting petitioner Gustafson for driving without possession of an operator's license, Officer Smith conducted a search of petitioner's person in which he removed a Benson and Hedges cigarette box. The officer put petitioner in the back seat of the squad car and then opened the cigarette box, disclosing marihuana cigarettes. As my Brother STEWART indicates, *ante*, at \_\_\_\_\_, no challenge was made either here or below with respect to the lawfulness of Officer Smith's decision to effect a full custodial arrest for this minor traffic offense. Whether or not it was lawful for the officer to have searched petitioner's person and removed the cigarette package before placing petitioner in the squad car, see *United States v. Willie Robinson, Jr., ante*, at \_\_\_\_\_. (Mr. Justice MARSHALL, dissenting), there was no justification for his opening the package and looking inside.

There was no reason to believe, and Officer Smith did not in fact believe, that petitioner was a dangerous person or that the package contained a weapon. The package's weight alone no doubt would have indicated that it did not contain a gun or knife. In any event, even were it possible that the package contained some

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

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

No. 71-1669

Recirculated: DEC 5 1973

James E. Gustafson, Petitioner, | On Writ of Certiorari to  
v. | the Supreme Court of  
State of Florida. | Florida.

[December —, 1973]

MR. JUSTICE MARSHALL, dissenting.

I respectfully dissent for the reasons stated in my opinion in *United States v. Willie Robinson, Jr., ante*, at —. The facts show that after arresting petitioner Gustafson for driving without possession of an operator's license, Officer Smith conducted a search of petitioner's person in which he removed a Benson and Hedges cigarette box. The officer put petitioner in the back seat of the squad car and then opened the cigarette box, disclosing marihuana cigarettes. As my Brother STEWART indicates, *ante*, at —, no challenge was made either here or below with respect to the lawfulness of Officer Smith's decision to effect a full custodial arrest for this minor traffic offense. Whether or not it was lawful for the officer to have searched petitioner's person and removed the cigarette package before placing petitioner in the squad car, see *United States v. Willie Robinson, Jr., ante*, at — — — (MR. JUSTICE MARSHALL, dissenting), there was no justification for his opening the package and looking inside.

There was no reason to believe, and Officer Smith did not in fact believe, that petitioner was a dangerous person or that the package contained a weapon. The package's weight alone no doubt would have indicated that it did not contain a gun or knife. In any event, even were it possible that the package contained some

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 13, 1973

Re: No. 71-1669 - Gustafson v. Florida

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

1st DRAFT

Printed 11-8-73

## SUPREME COURT OF THE UNITED STATES

No. 71-1669

James E. Gustafson, Petitioner, } On Writ of Certiorari to  
v. { the Supreme Court of  
State of Florida. Florida.

[November —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner James Gustafson was convicted in a Florida trial court for unlawful possession of marihuana. At his trial the State introduced into evidence marihuana which had been seized from him during a search incident to his arrest on a charge of driving without an operator's license. The District Court of Appeal of Florida, Fourth District, reversed petitioner's conviction, holding that the search which had led to the discovery of the marihuana was unreasonable under the Fourth and Fourteenth Amendments. *Gustafson v. State*, 243 So. 2d 615 (4th D. C. A. Fla. 1971). The Supreme Court of Florida in turn reversed that decision, *State v. Gustafson*, 258 So. 2d 1 (Fla. 1972), and petitioner sought certiorari in this Court. We granted certiorari, — U. S. —, and set the case for argument with No. 72-936. *United States v. Robinson*, also decided today, *ante*, p. —. For the reasons set forth below, we affirm the judgment of the Supreme Court of Florida.

At approximately 2 a. m., on January 12, 1969, Lieutenant Paul R. Smith, a uniformed municipal police officer of Eau Gallie, Florida, was on a routine patrol in an unmarked squad car when he observed a 1953 white Cadillac bearing New York license plates, driving