

The Burger Court Opinion Writing Database

Gooding v. United States
416 U.S. 430 (1974)

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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1974

Re: No. 72-6902 - Gooding v. United States

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
THE CHIEF JUSTICE

April 9, 1974

Re: No. 72-6902 - Gooding v. United States

Dear Bill:

Please join me.

Regards,

WFB

Mr. Justice Rehnquist

Copies to the Conference

P.S. Would you consider the change noted on page 27
as attached?

John Doe T. Muldrow
wo. D. J. Warren
w. G. B. / voted

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94505-6000



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consideration to neighboring provisions is not easy to interpret, it would be unusual for such a significant change as that proposed by petitioner to have entirely escaped notice.

Finally, it is important to note that the Department of Justice itself submitted this bill to Congress for enactment, including § 879 (a) in its present form. Since the hearings and debates stress that a major purpose of the bill was to supply more effective enforcement tools to combat the increasing use of narcotic drugs, it seems totally illogical to suggest that the Department of Justice would submit a bill making it substantially more difficult to control the traffic in hard drugs. Petitioner suggests that this surrender was necessary to convince Congress to bring additional drugs within the Controlled Substances Act, but that theory rests entirely on speculation. There is absolutely no indication in the legislative history that any price had to be paid for this much desired reorganization and expansion of the drug laws, much less the substantial price that petitioner argues had to be paid here.

We therefore conclude that 21 U. S. C. § 879 (a) requires no special showing for a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched at that time.⁴² We believe that the showing was met in this case. The affidavit submitted by the District of Columbia police officer suggested that there was a continuing traffic of drugs from petitioner's apartment, and a prior purchase through an informer had confirmed that drugs were available. This was sufficient to satisfy 21 U. S. C. § 879 (a). The judgment of the Court of Appeals for the District of Columbia Circuit is

Affirmed.

⁴² We note that the Court of Appeals for the Fifth Circuit has recently reached the same conclusion. See *United States v. Thomas*, No. 73-1403 (CA5), decided Dec. 19, 1973.



October 10, 1973

Dear Thurgood:

Please join me in your dissent in 72-6902, Gooding v. United States.

William O. Douglas

Mr. Justice Marshall

cc: The Conference

72-6902.

3/1/44

Dear Murphy

For a few weeks
Tom & Jim never
had work in Anthony
+ Belmont Island

Cross June - for colonial
+ Co. elements
City

To : The Chief Justice
Mr. Justice REED
Mr. Justice STEWART
Mr. Justice CLARK
Mr. Justice WARREN
Mr. Justice MARSHALL
Mr. Justice BLACK
Mr. Justice POWELL
Mr. Justice REHNQUIST

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6902

Mr. Justice DOUGLAS, J.

Lonnie Gooding, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

4-16

[March —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

The petitioner is charged with possession of heroin and narcotics paraphernalia in violation of 21 U. S. C. § 174 and 26 U. S. C. § 4704 (a). He moved the District Court to suppress certain evidence seized from his home pursuant to a search warrant secured by and directed to the Metropolitan Police Department of the District of Columbia. The District Court granted the suppression motion on the ground that the search was conducted at night in violation of 23 D. C. Code §§ 521-523 which limit search warrant execution to daylight hours absent specific contrary authorization founded upon the judicial officer's determination:

"[T]hat (A) it cannot be executed during the hours of daylight, (B) the property sought is likely to be removed or destroyed if not seized forthwith, or (C) the property sought is not likely to be found except at certain times or in certain circumstances" 23 D. C. Code § 522 (c)(1).¹

¹ 23 D. C. Code § 523 (b) directs that all search warrants are to be executed only during daylight hours, absent express authorization pursuant to 23 D. C. Code § 521 (f). Section 521 (f) allows authorization for nighttime execution where the "judicial officer has found cause therefore, including one of the grounds set forth in section 23-522 (c)(1)"

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6902

From: Douglas, J.

Lonnie Gooding, Petitioner, } On Writ of Certiorari to _____
v. _____
United States. } the United States Court _____
of Appeals for the Dis- _____
trict of Columbia Circuit. 4-17

[March —, 1974]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

The petitioner is charged with possession of heroin and narcotics paraphernalia in violation of 21 U. S. C. § 174 and 26 U. S. C. § 4704 (a). He moved the District Court to suppress certain evidence seized from his home pursuant to a search warrant secured by and directed to the Metropolitan Police Department of the District of Columbia. The District Court granted the suppression motion on the ground that the search was conducted at night in violation of 23 D. C. Code §§ 521-523 which limit search warrant execution to daylight hours absent specific contrary authorization founded upon the judicial officer's determination:

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¹ 23 D. C. Code § 523 (b) directs that all search warrants are to be executed only during daylight hours, absent express authorization pursuant to 23 D. C. Code § 521 (f). Section 521 (f) allows authorization for nighttime execution where the "judicial officer has found cause therefore, including one of the grounds set forth in section 23-522 (c)(1)"

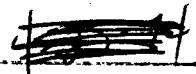
cc: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-6902

Circulated: 

Lonnie Gooding, Petitioner, } On Writ of Certiorari to
 v. } the United States Court
 United States. } of Appeals for the Dis-
 trict of Columbia Circuit.

4-25-74

[March —, 1974]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The petitioner is charged with possession of heroin and narcotics paraphernalia in violation of 21 U. S. C. § 174 and 26 U. S. C. § 4704 (a). He moved the District Court to suppress certain evidence seized from his home pursuant to a search warrant secured by and directed to the Metropolitan Police Department of the District of Columbia. The District Court granted the suppression motion on the ground that the search was conducted at night in violation of 23 D. C. Code §§ 521-523 which limit search warrant execution to daylight hours absent specific contrary authorization founded upon the judicial officer's determination:

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¹23 D. C. Code § 523 (b) directs that all search warrants are to be executed only during daylight hours, absent express authorization pursuant to 23 D. C. Code § 521 (f). Section 521 (f) allows authorization for nighttime execution where the "judicial officer has found cause therefore, including one of the grounds set forth in section 23-522 (c)(1)"

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. October 11, 1973

RE: No. 72-6902 Gooding v. United States

Dear Thurgood:

Please join me in your dissenting
opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 16, 1974

RE: No. 72-6902 Gooding v. United States

Dear Bill:

Please join me.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. April 25, 1974

RE: No. 72-6902 Gooding v. United States

Dear Thurgood:

Please join me in your dissenting
opinion in the above.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 28, 1974

Re: No. 72-6902, Gooding v. United States

Dear Bill,

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

Sincerely yours,

?S
J

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 1, 1974

Re: No. 72-6902 - Gooding v. United States

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

1st DRAFT

From: Marshall, J.

OCT 10

SUPREME COURT OF THE UNITED STATES

Recirculated:

LONNIE GOODING v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

No. 72-6902. Decided October —, 1973

MR. JUSTICE MARSHALL, dissenting.

The statute governing issuance of search warrants in federal narcotics cases, 21 U. S. C. § 879 (a) (1970), provides that search warrants in such cases may be executed at night only if "there is probable cause to believe that grounds exist for the warrant and for its service at such time." In this case, the Court of Appeals, by a 2-1 vote, held that the statute "requires only a showing of probable cause to believe that the narcotics will be found on the premises" at the time the warrant is executed. *United States v. Gooding*, — U. S. App. D. C. —, — F. 2d —, — (1973). Judge Robinson, dissenting on this issue, argued that the statute required not only probable cause for the search itself, but also a showing of "circumstances demonstrating reasonable cause" for a night-time search. — F. 2d, at —.

I find it difficult to accept the majority's interpretation of the statute. The showing of probable cause required for issuance of any warrant necessarily includes a showing that the objects to be seized will probably be present on the premises at the time of the search. Yet the majority of the Court of Appeals found that § 879 (a) requires no more than this, even for issuance of a warrant to be executed at night. This view effectively reads the final clause of § 879 (a)—which states that in addition to probable cause for the warrant there must also be "grounds . . . for its service at such time"—out of the statute entirely. I would be inclined to agree with

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

LONNIE GOODING v. UNITED STATES Recirculated: OCT 11

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

No. 72-6902. Decided October —, 1973

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN concur, dissenting.

The statute governing issuance of search warrants in federal narcotics cases, 21 U. S. C. § 879 (a) (1970), provides that search warrants in such cases may be executed at night only if "there is probable cause to believe that grounds exist for the warrant and for its service at such time." In this case, the Court of Appeals, by a 2-1 vote, held that the statute "requires only a showing of probable cause to believe that the narcotics will be found on the premises" at the time the warrant is executed. *United States v. Gooding*, — U. S. App. D. C. —, —, — F. 2d —, — (1973). Judge Robinson, dissenting on this issue, argued that the statute required not only probable cause for the search itself, but also a showing of "circumstances demonstrating reasonable cause" for a night-time search. — F. 2d, at —.

I find it difficult to accept the majority's interpretation of the statute. The showing of probable cause required for issuance of any warrant necessarily includes a showing that the objects to be seized will probably be present on the premises at the time of the search. Yet the majority of the Court of Appeals found that § 879 (a) requires no more than this, even for issuance of a warrant to be executed at night. This view effectively reads the final clause of § 879 (a)—which states that in addition to probable cause for the warrant there must also be "grounds . . . for its service at such time"—out of the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 4, 1974

Dear Bill:

If agreeable to you, I volunteer for the dissents
in 72-6902, Gooding v. U.S. and 73-434 et al (the Detroit
cases).

Sincerely,



T. M.

Mr. Justice Douglas

cc: Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 27, 1974

Re: No. 72-6902 -- Gooding v. U.S.

Dear Bill:

In due course I hope to circulate a dissenting opinion in this case.

Sincerely,



T. M.

Mr. Justice Rehnquist

cc: The Conference

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.

Circulated: APR 22 1974

No. 72-6902

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Lonnie Gooding, Petitioner,
v.
United States. } On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[April —, 1974]

MR. JUSTICE MARSHALL, dissenting.

I agree with my Brother DOUGLAS that the provisions of the District of Columbia Code requiring a showing of need for execution of a search warrant at night govern the search involved in this case, and, accordingly, I join in his dissenting opinion. However, the majority of the Court rejects this argument, and goes on to discuss the standards imposed by 21 U. S. C. § 879 (a) upon issuance of search warrants for nighttime execution in federal narcotics cases. Obviously, the Court's interpretation of § 879 (a) is of far greater significance, of national rather than purely local concern. I cannot let the Court's construction of § 879 (a) pass without registering my dissent on this issue as well.

The opinion of the Court, it seems to me, analyzes the § 879 (a) issue in a vacuum, without any discussion of some of the important policy considerations which underlie this question of statutory interpretation. Perhaps a partial vacuum would be a more appropriate description, since the Court is obviously fully cognizant of the substantial governmental interest in enforcement of the narcotics laws, an interest which its interpretation of § 879 (a) so well serves. But plainly there are other concerns implicated in our interpretation of this congressional enactment restricting the issuance of search

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

From: Marshall, J.

Circulated:

Recirculated: APR 25

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-6902

Lonnie Gooding, Petitioner, } On Writ of Certiorari to
v. } the United States Court
United States. } of Appeals for the Dis-
 } trict of Columbia Circuit.

[April —, 1974]

MR. JUSTICE MARSHALL, dissenting

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1974

Re: No. 72-6902 - Gooding v. U. S.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 28, 1974

No. 72-6902 Gooding v. U.S.

Dear Bill:

Please join me.

Sincerely,

L. F. Powell

Mr. Justice Rehnquist

1fp/ss

cc: The Conference

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

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 3/27/74

No. 72-6902

Recirculated: _____

Lonnie Gooding, Petitioner,
 v.
 United States. } On Writ of Certiorari to
 } the United States Court
 } of Appeals for the Dis-
 } trict of Columbia Circuit.

[April —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner in this case presents a claim that evidence offered against him at his trial should have been suppressed because it was seized at nighttime in violation of governing statutory provisions. The search which led to the seizure was conducted by officers of the District of Columbia Metropolitan Police Department at approximately 9:30 p. m. within the District of Columbia. Armed with a search warrant, the officers entered petitioner's apartment for the purpose of discovering violations of a federal narcotics statute, and seized a substantial amount of contraband narcotics. The parties urge upon us differing theories concerning which federal or District of Columbia statute bears on the legality of this search, and we must therefore interpret and reconcile several recent congressional enactments dealing with nighttime searches which seem to embody somewhat inconsistent views.¹

¹ The Government contends that even though we were to determine that the applicable statutory provision was violated in this case, the evidence should nonetheless not be suppressed. Since we conclude that the seizure was consistent with the governing statute, we have no occasion to reach this alternative argument.

p. 19, 22, 23

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

2nd DRAFT

2000-2001: 2002-2003: 2004-2005: 2006-2007:

SUPREME COURT OF THE UNITED STATES

No. 72-6902

412174

Lonnie Gooding, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner in this case presents a claim that evidence offered against him at his trial should have been suppressed because it was seized at nighttime in violation of governing statutory provisions. The search which led to the seizure was conducted by officers of the District of Columbia Metropolitan Police Department at approximately 9:30 p. m. within the District of Columbia. Armed with a search warrant, the officers entered petitioner's apartment for the purpose of discovering violations of a federal narcotics statute, and seized a substantial amount of contraband narcotics. The parties urge upon us differing theories concerning which federal or District of Columbia statute bears on the legality of this search, and we must therefore interpret and reconcile several recent congressional enactments dealing with nighttime searches which seem to embody somewhat inconsistent views.¹

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

p. 9, 27

From: Rehnquist, J.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Argued: _____
Dated: 4/24/74
No. 72-6902

Lonnie Gooding, Petitioner, } On Writ of Certiorari to
v. _____
United States. } the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[April —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner in this case presents a claim that evidence offered against him at his trial should have been suppressed because it was seized at nighttime in violation of governing statutory provisions. The search which led to the seizure was conducted by officers of the District of Columbia Metropolitan Police Department at approximately 9:30 p. m. within the District of Columbia. Armed with a search warrant, the officers entered petitioner's apartment for the purpose of discovering violations of a federal narcotics statute, and seized a substantial amount of contraband narcotics. The parties urge upon us differing theories concerning which federal or District of Columbia statute bears on the legality of this search, and we must therefore interpret and reconcile several recent congressional enactments dealing with nighttime searches which seem to embody somewhat inconsistent views.¹

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STYLISTIC CHANGES 7/16/21

16, 2

NOTICE : This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20548, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

To: The Clerk Justice
Mr. Justice Bowles
Mr. Justice Bryan
Mr. Justice Clegg
Mr. Justice Gammie
Mr. Justice Nichols
Mr. Justice Rossiter
Mr. Justice Slaughter
Mr. Justice Tamm

From: Fahnquist,

103 Circulated:

No. 72-6902

Recirculated: 4/26/74

Lonnie Gooding, Petitioner,
v.
United States. } On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[April 29, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner in this case presents a claim that evidence offered against him at his trial should have been suppressed because it was seized at nighttime in violation of governing statutory provisions. The search which led to the seizure was conducted by officers of the District of Columbia Metropolitan Police Department at approximately 9:30 p. m. within the District of Columbia. Armed with a search warrant, the officers entered petitioner's apartment for the purpose of discovering violations of a federal narcotics statute, and seized a substantial amount of contraband narcotics. The parties urge upon us differing theories concerning which federal or District of Columbia statute bears on the legality of this search, and we must therefore interpret and reconcile several recent congressional enactments dealing with nighttime searches which seem to embody somewhat inconsistent views.¹

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