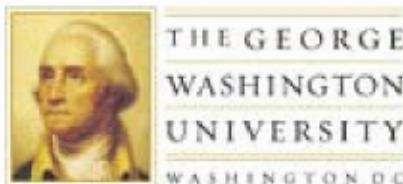


The Burger Court Opinion Writing Database

United States v. Gaddis

424 U.S. 544 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

February 27, 1976

Re: 74-1141 - U. S. v. Gaddis

Dear Potter:

I can join you in the judgment and will join
Byron's concurring opinion but I will not write. Please
show my "join" at the end of your opinion.

Byron's copy of this memo can serve to have
me join him.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1976

Re: 74-1141 - U. S. v. Gaddis

Dear Potter:

I am content to leave me shown simply as
joining Byron without the reservation I previously
suggested.

Regards,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 19, 1976

RE: No. 74-1141 United States v. Gaddis

Dear Potter:

I am happy to join your opinion in the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

FEB 9 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1141

United States, Petitioner,
v.
Bobby Gene Gaddis and
Billy Sunday Birt. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[February —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

A federal grand jury in Georgia returned an eight-count indictment against the respondents Gaddis and Birt, charging them with entering a federally insured bank with intent to rob it by force and violence (Count 1) and robbing the bank by force and violence (Count 2), in violation of 18 U. S. C. § 2113 (a);¹ with possessing the funds stolen in the robbery (Count 3), in violation of

¹“(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

“Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

“Shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.” 18 U. S. C. § 2113.

To: The Chief Justice
Mr. Justice Parker
Mr. Justice Alderson
~~Mr. Justice Borden~~
Mr. Justice Cartwright
Mr. Justice Christie
Mr. Justice D'Avignon
Mr. Justice Evans
Mr. Justice French
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated:

THE AMERICAN

Recirculated:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1141

United States, Petitioner,
v.
Bobby Gene Gaddis and
Billy Sunday Birt. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[February —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

A federal grand jury in Georgia returned an eight-count indictment against the respondents Gaddis and Birt, charging them with entering a federally insured bank with intent to rob it by force and violence (Count 1) and robbing the bank by force and violence (Count 2), in violation of 18 U. S. C. § 2113 (a);¹ with possessing the funds stolen in the robbery (Count 3), in violation of

¹“(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

"Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

"Shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both." 18 U. S. C. § 2113.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 4, 1976

MEMORANDUM TO THE CONFERENCE

Cases heretofore held for No. 74-1141, United States v. Gaddis

1. No. 74-5869, Dixon v. United States

Dixon was charged with armed bank robbery in violation of 18 U.S.C. § 2113 (a) and (d) and with possession of the proceeds of the bank robbery in violation of 18 U.S.C. § 2113 (c). The trial court's charge to the jury, to which Dixon did not object, was erroneous in that it did not tell the jury that Dixon could not be convicted of both robbery and possession of the robbery proceeds. The jury convicted Dixon only of possessing the proceeds. The Eighth Circuit correctly affirmed. Heflin, Milanovich, and Gaddis stand for the proposition that a defendant cannot be convicted of both robbery and possession of the proceeds. Dixon was not; he was convicted only of the lesser offense, a mistrial having been declared on the robbery count. No other issues are raised in the petition.

In No. 74-5869, I would vote to deny. ✓

✓

2. No. 74-1476, United States v. Sellers
No. 74-6503, Sellers v. United States

Sellers was convicted of armed bank robbery in violation of 18 U.S.C. § 2113 (a), (b), and (d) and of possession of the proceeds of that robbery in violation of 18 U.S.C. § 2113 (c). The Court of Appeals for the Fourth Circuit noted that the evidence on the robbery count was circumstantial -- Sellers had been seen riding in a blue Ford auto on two occasions within the 24 hours prior to the robbery and the robbers made their getaway in a blue Ford. The

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

From: Mr. Justice White

Circulated: _____

Recirculated: 2-23-76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1141

United States, Petitioner,
 v.
 Bobby Gene Gaddis and
 Billy Sunday Birt. } On Writ of Certiorari to the
 } United States Court of Appeals for the Fifth Circuit.

[February —, 1976]

MR. JUSTICE WHITE, concurring.

Because the Court deems this case distinguishable from *Milanovich v. United States*, 365 U. S. 551, it sees no occasion to consider the continuing validity of that decision; and I do not read the Court's opinion as reaffirming, in addition to describing, the *Milanovich* rule that a new trial is required when (1) a jury is erroneously permitted to convict a defendant both of bank robbery, 18 U. S. C. §§ 2113 (a), (b), or (d) and of knowing possession of the proceeds of that robbery, 18 U. S. C. § 2113 (c), and (2) there is evidence to support both convictions.

As the majority states, a jury, having convicted on the robbery count, should stop there without going on to consider the possession count. If the jury is erroneously permitted, however, to consider and convict on the possession count as well, such a conviction casts absolutely no doubt on the validity of the robbery conviction. Under such circumstances it is not impossible to say upon which count, if either, a properly instructed jury would have convicted the defendant. It may be concluded with satisfactory certainty that the jury, having convicted for both offenses, would have convicted of robbery if it had been properly instructed. The verdict on the robbery count shows that the jury found each element of that offense to have been established beyond a reasonable

STYLISTIC CHANGES THROUGHOUT.
SEE PAGE 8: 2

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

From: Mr. Justice White

Circulated: _____

Recirculated: 2-25-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1141

United States, Petitioner,
v.
Bobby Gene Gaddis and
Billy Sunday Birt. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[February —, 1976]

MR. JUSTICE WHITE, concurring.

Because the Court deems this case distinguishable from *Milanovich v. United States*, 365 U. S. 551 (1961), it sees no occasion to consider the continuing validity of that decision; and I do not read the Court's opinion as reaffirming, in addition to describing, the *Milanovich* rule that a new trial is required when (1) a jury is erroneously permitted to convict a defendant both of bank robbery, 18 U. S. C. §§ 2113 (a), (b), or (d), and of knowing possession of the proceeds of that robbery, 18 U. S. C. § 2113 (c), and (2) there is evidence to support both convictions.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 1, 1976

Re: No. 74-1141 - United States v. Gaddis

Dear Potter:

Please show me in the "line-up" as joining
your opinion and filing a concurring opinion.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 10, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1141 -- United States v. Gaddis

In due time I hope to circulate a dissent in
this one.



T. M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1976

Re: No. 74-1141 -- United States v. Gaddis

Dear Potter:

If you will permit me, I will withdraw my threat
of a dissent and join your opinion.

Sincerely,

T.M.
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 13, 1976

Re: No. 74-1141 - United States v. Gaddis

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 11, 1976

No. 74-1141 United States v. Gaddis

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 10, 1976

Re: No. 74-1141 - United States v. Gaddis

Dear Potter:

Please join me.

Sincerely,

WR

Mr. Justice Stewart

Copies to the Conference