

The Burger Court Opinion Writing Database

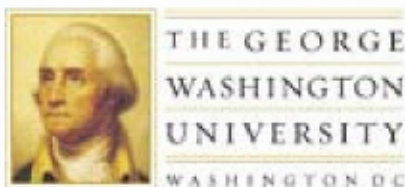
G.M. Leasing Corp. v. United States

429 U.S. 338 (1977)

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

December 9, 1976

Re: 75-235 G. M. Leasing Corporation v. United States et al.

Dear Harry:

? I am in general agreement with your proposed disposition, but the language seems broad enough to preclude an instant seizure when our hero's minions were seen removing cartons (of records) in the dark of night. It is clear to me that would have allowed for instant action without a warrant. By letting it pass, any claim to exigent circumstances washed out.

You know how I abominate these fractionated, concurring opinions, so I can join if you will add at page 20, line 7, something like this:

"with respect to the first or the second warrantless entries." 22/

22/ The surreptitious removal of cartons from the office at night, observed by the agents, might well have constituted an "exigent circumstance" justifying an immediate entry and seizure of the materials. See Cardwell v. Lewis 417 U.S. 583, 595. Here, however, the agents failed to act for more than a day after observing these events. *

Regards,

-576

Mr. Justice Blackmun

WBB

* The first sentence might read: We are not called on to decide whether the....

with "would have" in place of "might well have."

WBB

CC
du

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

CHAMBERS OF
THE CHIEF JUSTICE

December 16, 1976

Re: 75-235 G.M. Leasing Corporation v. United States

Dear Harry:

I gather one of your boys talked about this case with Paul Ondrasik and could not see my point. I give it another try in the form of a footnote for the end of the seventh line on page 20, along these lines:

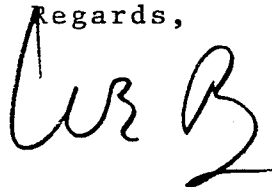
canal

"Of course, our holding does not imply that the surreptitious removal of cartons from the office observed by the agents during their "stake out" surveillance of the cottage at night ~~did not constitute~~ "exigent circumstances" ~~which would have justified an immediate entry and seizure of the materials."~~

As it stands the opinion gives the impression that even the removal of files under cover of night was not an exigent circumstance.

With something like this I can join without writing.

Regards,



Mr. Justice Blackmun

such as would justify

To: Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice White
 ✓ Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brandeis

From: _____
 Circulated: DEC 29 1974
 Re: _____

No. 75-235 - G.M. Leasing Corporation v. United States

MR. CHIEF JUSTICE BURGER, concurring:

While I concur in the opinion of the Court, it may be useful to note that the factual setting of this case provides what seems, to me, a classic illustration of the dividing line between an impermissible, warrantless entry and one permissible under the "exigent circumstance" exception to the Fourth Amendment warrant requirement.

After their initial entry into, and retreat from, the petitioner's office-cottage, the IRS agents assigned to the investigation of the fugitive Norman's tax liability placed the premises under twenty-four hour surveillance. One night during the course of this surveillance, the agents observed cartons and other materials being removed from the premises by persons unknown to them. Against the background facts, such surreptitious nighttime activity constituted an exigent circumstance that would have justified an immediate seizure of the materials being moved in order to protect the interests of the United States. This is especially so since here the premises were controlled by the alter ego of an individual who

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

Printed
 1st DRAFT

From: The Chief Justice

Circulated: JAN 3 1977

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-235

G. M. Leasing Corp., Petitioner, v. United States et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.
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[January —, 1977]

MR. CHIEF JUSTICE BURGER, concurring.

While I concur in the opinion of the Court, it may be useful to note that the factual setting of this case provides what seems, to me, a classic illustration of the dividing line between an impermissible, warrantless entry and one permissible under the "exigent circumstance" exception to the Fourth Amendment warrant requirement.

After their initial entry into, and retreat from, the petitioner's office-cottage, the IRS agents assigned to the investigation of the fugitive Norman's tax liability placed the premises under 24-hour surveillance. One night during the course of this surveillance, the agents observed cartons and other materials being removed from the premises by persons unknown to them. Against the background facts, such surreptitious nighttime activity constituted an exigent circumstance that would have justified an *immediate* seizure of the materials being moved in order to protect the interests of the United States. This is especially so since here the premises were controlled by the alter ego of an individual who was not only a delinquent taxpayer, but who was, at the time, a fugitive from justice. Rather than acting immediately, however, the agents chose to wait for approximately a day and a half to two days before making their entry. I agree with the conclusion that there were no exigent circumstances on these facts; however, the Court holds no more

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 2, 1976

RE: No. 75-235 G.M. Leasing Corp. v. United States

Dear Harry:

I think this is a fine job and I wanted to get my
join in as quickly as possible. I may have some minor
suggestions to make a little later on.

Sincerely,



Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 2, 1976

RE: No. 75-235 G.M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 6, 1976

Re: No. 75-235, G.M. Leasing Corp. v. United States

Dear Harry,

Like John Stevens, I am troubled by the apparent breadth of the second sentence of paragraph C at the bottom of page 12 of your opinion. The addition to the sentence of a qualifying phrase such as "to satisfy a tax deficiency assessment" would satisfy my concern. This qualification would, I think, be consistent with the balance of the paragraph and with what is said later on in your opinion. If you are willing to modify the sentence in question along the line suggested, I shall be glad to join your opinion for the Court.

Sincerely yours,

P.S.
/

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 7, 1976

Re: No. 75-235, G. M. Leasing Corp. v. United States

Dear Harry,

I am glad to join your opinion for the Court,
as recirculated today.

Sincerely yours,

P.S.
✓

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 2, 1976

Re: No. 75-235 - G. M. Leasing Corp. v. U. S.

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 6, 1976

Re: No. 75-235, G. M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

JM.
T. M.

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 11/30/76

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-235

G. M. Leasing Corp., Petitioner, v. United States et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.
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[December —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

We granted certiorari in this case, 423 U. S. 1031 (1975), limited to the Fourth Amendment issue arising in the context of seizures of property in partial satisfaction of income tax assessments.¹

I

Petitioner G. M. Leasing Corp. is a Utah corporation organized in April 1972; among its stated business purposes is the leasing of automobiles. George I. Norman, Jr., although apparently not an incorporator, officer, or director of petitioner, was its general manager.

In 1971 Norman was tried and convicted in the United States District Court for the District of Colorado on two counts of aiding and abetting a misapplication of funds from a federally insured bank, in violation of 18 U. S. C. §§ 2 and 656. He was sentenced to two consecutive two-year terms of imprisonment. On appeal, his conviction was

¹ The Fourth Amendment reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

December 7, 1976

Re: No. 75-235 - G.M. Leasing Corp. v. U.S.

Dear Potter and John:

My revised third draft was circulated this morning before I received Potter's letter of December 6. I believe that the change effected in paragraph C on page 12 should satisfy the difficulties each of you is experiencing.

Sincerely,

HAB.

Mr. Justice Stewart
Mr. Justice Stevens

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

From: Mr. Justice Blackmun

Circulated to the Justices

3rd DRAFT

Received 12/7/76

SUPREME COURT OF THE UNITED STATES

No. 75-235

G. M. Leasing Corp., Petitioner, v. United States et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.
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[December —, 1976]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 17, 1976

Re: No. 75-235 - G.M. Leasing Corp. v. United States

Dear Chief:

I have your letter of December 16. Bill Block did indeed confer with your clerk, but he did so with my complete acquiescence. I sense from your letter that this may not be a desirable practice in your chambers. If so, I should be advised, for interclerk communication, as you know, is routine among all other chambers.

So far as your suggested change is concerned, I can only say that we know very well what your point is. I am, however, hesitant about complying with your request for the following reasons:

1. As I stated at the conference of December 10, we feel that what you suggest is already apparent in the opinion. Surely the paragraph beginning at the bottom of page 19 refers to exigent circumstances. You obviously do not agree that this is sufficient.

2. Eight votes are in. At least one of these has indicated that he may depart if further changes are made. I doubt that he will, but I prefer not to take that risk.

3. Nowhere in his brief or at oral argument did the SG assert that the removal of cartons from the cottage was a separate "exigent circumstance" justifying immediate entry. Indeed, in regard to the removal of the cartons, he said, "Nobody apparently focused on that issue at the trial level." Tr. of Oral Arg. 36.

We don't even know what was in the cartons. Brief for Resp. 10. Although we may be suspicious, we have no way of knowing who was engaged in the removal of cartons from the cottage that evening. The petitioner in its reply brief, p. 18, emphasizes the fact that the record is completely silent as to who was engaged in that activity. In light of the confusion and ambiguities surrounding the removal of cartons, I am reluctant to make a definitive statement.

Sincerely,

HAB

The Chief Justice

✓
pp. 12, 13 &
STYLISTIC CHANGES

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 1/4/77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-235

G. M. Leasing Corp., Petitioner, v. United States et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.
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[December —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 2, 1976

No. 75-235 G. M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 2, 1976

Re: No. 75-235 - G.M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Sincerely,

wm

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 2, 1976

Re: 75-235 - G.M. Leasing Corp. v. United States

Dear Harry:

There is just one part of your opinion that troubles me. I think the sentence at the bottom of page 12 indicates that a warrant is never necessary to seize goods in plain view. I think that statement is inconsistent with the discussion of the "plain view" doctrine in Coolidge v. New Hampshire, 403 U.S. 443, at 465-472. If you can narrow the statement to avoid any conflict with Coolidge, I would be happy to join your opinion.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 7, 1976

Re: 75-235 - G.M. Leasing Corp. v. United States

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference