

# The Burger Court Opinion Writing Database

## *Simpson v. United States*

435 U.S. 6 (1978)

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 15, 1978

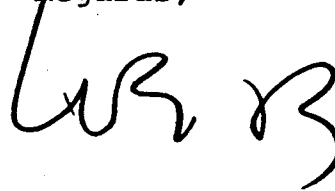
Dear Bill:

Re: 76-5761 Simpson v. United States

I am in general agreement with your February 9 circulated draft, but I question the discussion in Note 6, page 6, particularly in light of the narrower thrust of the final draft.

If you feel strongly about it, I suspect I could go along.

Regards,



Mr. Justice Brennan

cc: The Conference

10: The Chief Justice  
 Mr. Justice Stewart  
 Mr. Justice White  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Brennan  
 Mr. Justice Souter

From Mr. Justice Brennan

Circulation 3

Approved

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 76-5761 AND 76-5796

Michael Lee Simpson and Tommy  
 Wayne Simpson, Petitioners,  
 76-5761 v.  
 United States.

Michael Lee Simpson, Petitioner,  
 76-5796 v.  
 United States.

On Writs of Certiorari to  
 the United States Court  
 of Appeals for the Sixth  
 Circuit.

[February —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The punishment for bank robbery of a fine of not more than \$5,000 and imprisonment for not more than 20 years, or both, 18 U. S. C. § 2113 (a), may be enhanced to a fine of not more than \$10,000 and imprisonment for not more than 25 years, or both, when the robbery is committed "by the use of a dangerous weapon or device," 18 U. S. C. § 2113 (d).<sup>1</sup> Another

<sup>1</sup> Title 18 U. S. C. §§ 2113 (a) and (d) provide:

"(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 or

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

changes on pp 3, 5, 9, 11

From: Mr. Justice Brennan

Circulated

Recirculated

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 76-5761 AND 76-5796

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 Wayne Simpson, Petitioners,  
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 United States.

Michael Lee Simpson, Petitioner,  
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pp 3, 5-7, 8, 10

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice Brennan  
✓ Mr. Justice White  
Mr. Justice Rehnquist  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer

From: Mr. J.

Circulated: 11/11/78

Recirculated: 2/11/78

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

Nos. 76-5761 AND 76-5796

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Wayne Simpson, Petitioners,  
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On Writs of Certiorari to  
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[February —, 1978]

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

P. 10

4th DRAFT

2/9/78

# SUPREME COURT OF THE UNITED STATES

Nos. 76-5761 AND 76-5796

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Wayne Simpson, Petitioners,  
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On Writs of Certiorari to  
the United States Court  
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[February —, 1978]

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 16, 1978

RE: No. 76-5761 Simpson v. United States

Dear Chief:

Lewis also raised the question of the need to incorporate the discussion in footnote 6 into the opinion. As I explained to him, the reading of 2113(d) that we adopt is the premise on which the opinion is built. If one can violate 2113(d) without using "a dangerous weapon or device", then the behavior which that statute is designed to deter is not necessarily congruent with the behavior 924(c) is aimed at punishing. Moreover, although the issue resolved in footnote 6 should be settled, it does not seem to me of such importance that we are likely to grant cert on a case presenting it alone. In short, I'd like to include the footnote unchanged.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 1, 1978

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Nos. 76-5761 and 76-5796, Simpson v. United States

1. No. 76-6258, Whitehead v. United States

Following a jury trial in district court, petitioner was convicted of conspiring to commit bank robbery in violation of 18 U.S.C. § 371 (Count One), aggravated bank robbery in violation of 18 U.S.C. § 2113(d) (Count Two), using a firearm during the commission of the robbery in violation of 18 U.S.C. § 924(c)(1) (Count Three), and of unlawfully carrying a firearm during the robbery in violation of § 924(c)(2) (Count Four). He was sentenced to consecutive terms of 20 years' imprisonment on Count Two and five years' imprisonment on Count Three, but received no sentence on either Count One or Count Four. The Court of Appeals, relying on its recent decisions in United States v. Crew, 538 F.2d (1976), and United States v. Mathis, 538 F.2d 326 (1976), rejected petitioner's claim that his conviction for aggravated bank robbery under 18 U.S.C. § 2113(d)

Brenn 77



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 2, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-5174, Murry v. United States (held for  
Nos. 76-5761 and 76-5796, Simpson v. United States

I indicated in yesterday's Simpson hold memo that I would vote to grant, vacate, and remand this case. After taking a second look at it, I believe that the proper disposition of the case is to deny cert. Petitioner was convicted on three separate counts of (1) bank robbery in violation of 18 U.S.C. § 2113(a), (2) aggravated bank robbery in violation of § 2113(d), and (3) unlawfully carrying a firearm while committing a felony in violation of 18 U.S.C. § 924(c)(2). Contrary to the usual practice in aggravated bank robbery cases, in which a defendant convicted of violating §§ 2113(a) and (d) is sentenced only under § 2113(d) in order to comply with Prince v. United States, 252 U.S. 322 (1957), the district court in this case imposed its primary sentence on petitioner for his violation of § 2113(a), and tacked on concurrent terms of two years' probation for his violation of § 2113(d) and § 924(c). On appeal, the Sixth Circuit

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 8, 1978

No. 76-5761 and No. 76-5796  
Simpson v. United States

Dear Bill,

As I tried to indicate at the time of our Conference discussion of this case, I would have reached the same result you do in this case on the basis of somewhat different reasoning. Unless, however, somebody else writes a concurring opinion, I shall be glad to go along with your opinion for the Court.

Sincerely yours,

P.S.  
/

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 8, 1978

76-5761 & 76-5796:  
Simpson v. United States

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 1, 1978

Re: Nos. 76-5761 and 76-5796, Simpson v. United States

Dear Bill:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 2, 1978

Re: No. 76-5761) - Simpson v. United States  
No. 76-5796)

Dear Bill:

Please join me. I offer one suggestion, and it is only in the form of a question. Would it be better, rather than reverse outright, merely to remand the case with directions to vacate the convictions under § 924(c)?

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 2, 1977

No. 76-5761 Simpson v. United States  
No. 76-5796 Simpson v. United States

Dear Bill:

I am generally in accord with your opinion for the Court.

Footnote 9, in its present context, concerns me. It could be read as reflecting little or no respect for the "plain meaning rule". The term "any felony" in §924(c) is unambiguous. If we were construing only that section, the plain meaning rule surely would be applicable. But here, as you convincingly point out on page 10, we have a more specific statute (§2113) that - under normal rules of construction - controls. Could we not simply omit footnote 9, or move it to page 10 and relate it to the "specific statute" rule of construction?

Footnote 6 also prompts me to raise a question. In it, you "expressly adopt" the government's reading of a provision of §2113(d) that is not directly in issue in this case. Perhaps this is justified by the inference you find in Prince v. United States, 352 U.S. at 329 n. 11. Also, it certainly will be helpful to resolve the conflict among the Circuits. My only concern, therefore, is that volunteering this holding appears to be contrary to our normal policy of restraint.

What do you think?

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

*Brenn 77*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 8, 1978

No. 76-5761 Simpson v. United States  
No. 76-5796 Simpson v. United States

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Confernce

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 9, 1978

Re: Nos. 76-5761 and 76-5796 Simpson v. United States

Dear Bill:

As the sole dissenter from the result reached by your opinion in Conference, I am going to undertake the preparation of a short and rather mild dissent in this case. I hope to have it around at least in Xerox form by the middle of next week.

Sincerely,

*wm*

Mr. Justice Brennan

Copies to the Conference



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 16, 1978

Re: No. 76-5761 - Simpson v. United States

Dear Bill:

I had thought earlier that I could have my draft dissent in this case around, at least in Xerox form, by tomorrow; unfortunately, I have fallen behind, and will not be circulating it until the middle of next week. My apologies.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: FEB 21 1978

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

Nos. 76-5761 and 76-5796

Michael Lee Simpson and Tommy Wayne Simpson,  
Petitioners,

v.

United States;

and

Michael Lee Simpson, Petitioner

v.

United States.

Petitions for certiorari to United States Court of Appeals for  
the Sixth Circuit

MR. JUSTICE REHNQUIST, dissenting.

I am unable to agree with the Court's conclusion in this  
case that petitioner, upon being convicted and sentenced under  
18 U.S.C. § 2113(d) for armed robbery, could not have his sentence  
enhanced pursuant to the provisions of 18 U.S.C. § 924(c) which

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

Justice Rehnquist

Filed: FEB 24 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

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On Writs of Certiorari to  
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 of Appeals for the Sixth  
 Circuit.

[February —, 1978]

MR. JUSTICE REHNQUIST, dissenting.

I am unable to agree with the Court's conclusion in this case that petitioner, upon being convicted and sentenced under 18 U. S. C. § 2113 (d) for armed robbery, could not have his sentence enhanced pursuant to the provisions of 18 U. S. C. § 924 (c) which provides that when a defendant uses a firearm in the commission of a felony, he "shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year or more than ten years." The plain language of the statutes involved certainly confers this sentencing authority upon the District Court. The Court chooses to avoid this plain meaning by resort to a canon of construction with which no one disagrees, "our practice of avoiding constitutional decisions where possible," *ante*, p. 7. The Court then relies on a statement made on the floor of the House of Representatives by Congressman Poff, who sponsored the amendment which became this part of the Gun Control Act of 1968, to the effect that the amendment would not apply to offenses governed by 18 U. S. C. § 2113. But neither of these proffered rationales justifies the Court's decision today.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 2, 1978

Re: 76-5761; 76-5796 - Simpson v. United States

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference