The Burger Court Opinion Writing Database

Williams v. Florida

399 U.S. 78 (1970)

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

May 12, 1970

Re: No. 927 - Williams v. Florida

Dear Byron:

I join in your excellent exposition of the alibi notice rule and the less-than-twelve jury. I will circulate a short concurrence in due course.

WEB

W. E. B.

Mr. Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: The Chief Justice

Circulated: MAY 13 1970

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 927.—October Term, 1969

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[May —, 1970]

Mr. Chief Justice Burger, concurring.

I join fully in Mr. Justice White's opinion for the Court. I see an added benefit to the alibi notice rule in that it will serve important functions by way of disposing of cases without trial in appropriate circumstances—a matter of considerable importance when courts, prosecution offices and legal aid and defender agencies are vastly overworked. The prosecutor upon receiving notice will, of course, investigate prospective alibi witnesses. If he finds them reliable and unimpeachable he will doubtless re-examine his entire case and this process would very likely lead to dismissal of the charges. In turn he might be obliged to determine why false charges were instituted and where the breakdown occurred in the examination of evidence which led to a charge.

On the other hand, inquiry into a claimed alibi defense may reveal it to be contrived and fabricated and the witnesses accordingly subject to impeachment or other attack. In this situation defense counsel would be obliged to re-examine his case and, if he found his client has proposed the use of false testimony, either seek to withdraw from the case or try to persuade his client to enter a plea of guilty, possibly by plea discussions which could lead to disposition on a lesser charge.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

No. 927

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

November 18, 1969

MEMORANDUM TO THE CHIEF JUSTICE

Re: No. ~~323 Misc.~~ O. T. 1969 - Williams v. Florida.

I requested that a response be submitted in this case. Upon full consideration I am not inclined to ask that it be discussed at conference unless some other member of the Court thinks it should be.

Respectfully,

H. L. B.

cc: Members of the Conference

No. 927

No. ~~323 Misc~~. O. T. 1969
WILLIAMS v. FLORIDA
Cert to Dist Ct App., 3rd Dist

SUPPLEMENTAL MEMO

The response requested in this case by Mr. Justice Black has been received and this memorandum was prepared in his chambers.

The State says that the rule requiring disclosure of potential witnesses was designed to avoid unwarranted surprise at trial and to allow time to determine whether the alibi defense has merit. It notes that decisions in other states have upheld such statutes.

In reply to petr's claim that a twelve-man jury is required, the State notes that Duncan v. Louisiana, 391 U. S. 145, did not specifically so hold, and then it presents arguments why such a requirement is not necessary. The State first points to Justice Fortas' concurring opinion which indicated that all the federal jury practices are not necessarily required by the Constitution to be applied to the States. Bloom v. Illinois, 391 U.S. 194, 213 (concurring opinion). The State also points to Justice Harlan's dissenting opinion which indicates that "there is no significance except to mystics in the number 12." Duncan v. Louisiana, supra, at 182. Finally, the State argues that a six-man

jury can as adequately protect the accused as can a jury of twelve. 1/

KCB

1/ The initial memo did not indicate the fact that the trial here began on August 15, 1968, after the date of the decision in Duncan.

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 30, 1970

Dear Byron:

Re: No. 927 - Johnny Williams v. Florida

I am very happy to agree to that part of your opinion which holds that the Constitution does not require a jury to be composed of twelve men. I regret, however, that unless further study convinces me to the contrary, I shall want to dissent to Part I of your opinion which holds that a defendant charged with crime can be required by the State to disclose the names and possible testimony of witnesses he expects to use to prove an alibi.

I shall try to get out my dissent without much delay.

Sincerely,

H. L. B.

Mr. Justice White

cc: Members of the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

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

From: Black, J.
MAY 22 1970
Circulated:
Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 927.—October Term, 1969

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[May —, 1970]

Mr. Justice Black, concurring in part and dissenting in part.

The Court today holds that a State can, consistently with the Sixth Amendment to the United States Constitution, try a defendant in a criminal case with a jury of six members. I agree with that decision for substantially the same reasons given by the Court. The Court also holds that a State can require a defendant in a criminal case to disclose in advance of trial the nature of his alibi defense and give the names and addresses of witnesses he will call to support that defense. This requirement, the majority says, does not violate the Fifth Amendment prohibition against compelling a criminal defendant to be a witness against himself. Although this case itself involves only a notice-of-alibi provision, it is clear that the decision means that a State can require a defendant to disclose in advance of trial any and all information he might possibly use to defend himself at trial. This decision, in my view, is a radical and dangerous departure from the historical and constitutionally guaranteed right of a defendant in a criminal case to remain completely silent, requiring the State to prove its case without any assistance of any kind from the defendant himself.

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

SUPREME COURT OF THE UNITED STATES

Prof. Black, J.

No. 927.—October Term, 1969

Circulated:
Recirculated: MAY 26 1970

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[June —, 1970]

Mr. Justice Black, with whom Mr. Justice Douglas joins, concurring in part and dissenting in part.

The Court today holds that a State can, consistently with the Sixth Amendment to the United States Constitution, try a defendant in a criminal case with a jury of six members. I agree with that decision for substantially the same reasons given by the Court. My Brother Harlan, however, charges that the Court's decision on this point is evidence that the "incorporation doctrine," through which the specific provisions of the Bill of Rights are made fully applicable to the States under the same standards applied in federal courts, see cases cited in *In re Winship*, 397 U. S. —, — (1970) (Black, J., dissenting), will somehow result in a "dilution" of the protections required by those provisions. He asserts that this Court's desire to relieve the States from the rigorous requirements of the Bill of Rights is bound to cause reexamination and modification of prior decisions interpreting those provisions as applied in federal courts in order simultaneously to apply the provisions equally to the state and federal governments and to avoid undue restrictions on the States. This assertion finds no support in today's decision or any other decision of this Court. We have emphatically "rejected the notion that the Fourteenth Amendment applies to the States only a 'watered-down, subjective version of the individual

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

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated:

Recirculated: JUN - 5 1970

No. 927.—October Term, 1969

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[June —, 1970]

Mr. Justice Black, with whom Mr. Justice Douglas joins, concurring in part and dissenting in part.

The Court today holds that a State can, consistently with the Sixth Amendment to the United States Constitution, try a defendant in a criminal case with a jury of six members. I agree with that decision for substantially the same reasons given by the Court. My Brother Harlan, however, charges that the Court's decision on this point is evidence that the "incorporation doctrine," through which the specific provisions of the Bill of Rights are made fully applicable to the States under the same standards applied in federal courts [1] will somehow result in a "dilution" of the protections required by those provisions. He asserts that this Court's desire to relieve the States from the rigorous requirements of the Bill of Rights is bound to cause re-examination and modification of prior decisions interpreting those provisions as applied in federal courts in order simultaneously to apply the provisions equally to the state and federal governments and to avoid undue restrictions on the States. This assertion finds no support in today's decision or any other decision of this Court. We have emphatically "rejected the notion that the Fourteenth Amendment

[1] See cases cited in *In re Winship*, 397 U. S. 358, 382 n. 11 (Black, J., dissenting) (1970).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

April 29, 1970

Dear Byron:

Re: No. 927 - Williams v. Florida

In the above case, please note I join your opinion.

W. O. D.

Mr. Justice White

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 8, 1970

Dear Hugo: Re: 927 - Williams v. Florida

In this case in which Byron has written the opinion and in which I believe you are dissenting, there is a dicussion of a related problem in a dissenting opinion in People v. Pike, 71 Adv. Cal. Reports 617,632 et seq.

W. O. D.

Mr. Justice Black

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

From: Black, J.

Circulated: MAY 22 1970

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 927.—October Term, 1969

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[May —, 1970]

Mr. Justice Black, concurring in part and dissenting in part.

The Court today holds that a State can, consistently with the Sixth Amendment to the United States Constitution, try a defendant in a criminal case with a jury of six members. I agree with that decision for substantially the same reasons given by the Court. The Court also holds that a State can require a defendant in a criminal case to disclose in advance of trial the nature of his alibi defense and give the names and addresses of witnesses he will call to support that defense. This requirement, the majority says, does not violate the Fifth Amendment prohibition against compelling a criminal defendant to be a witness against himself. Although this case itself involves only a notice-of-alibi provision, it is clear that the decision means that a State can require a defendant to disclose in advance of trial any and all information he might possibly use to defend himself at trial. This decision, in my view, is a radical and dangerous departure from the historical and constitutionally guaranteed right of a defendant in a criminal case to remain completely silent, requiring the State to prove its case without any assistance of any kind from the defendant himself.

May 25, 1970

Dear Byron:

In No. 927 - Williams v. Florida, Hugo's concurring opinion and dissenting opinion has shook me up. So I think I will join him. I hope this does not cause you irreparable harm. As I guess you know, I have been wobbly on the case.

William O. Douglas

Mr. Justice White

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8, 11, 16

Bob
The
Good

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

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

Nos. 188 AND 927.—OCTOBER TERM, 1969

Circulated:

JUN 9 1970

Recirculated:

Robert Baldwin, Appellant, 188 *v.* State of New York.	On Appeal From the Court of Appeals of New York.
Johnny Williams, Petitioner, 927 *v.* State of Florida.	On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[June —, 1970]

MR. JUSTICE HARLAN, dissenting in No. 188, and concurring in No. 927.

In *Duncan* v. *Louisiana,* 391 U. S. 145 (1968), the Court held, over my dissent and that of MR. JUSTICE STEWART, that a state criminal defendant is entitled to a jury trial in any case which, if brought in a federal court, would require a jury under the Sixth Amendment. Today the Court holds, in No. 188, *Baldwin* v. *New York,* that New York cannot constitutionally provide that misdemeanors carrying sentences up to one year shall be tried in New York City without a jury.[1] At the same time the Court holds in No. 927, *Williams* v. *Florida,* that Florida's six-member jury statute satisfies the Sixth Amendment as carried to the States by the *Duncan* holding.[2] The necessary consequence of this decision is that 12-member juries are not *constitutionally* required in *federal* criminal trials either.

The historical argument by which the Court undertakes to justify its view that the Sixth Amendment does not require 12-member juries is, in my opinion, much

[1] Outside of New York City, such cases are triable before six-member juries.

[2] Florida provides for a jury of 12 in capital cases and a six-member jury "to try all other criminal cases." Fla. Stat. § 913.10 (1) (1967).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 4, 1970

RE: No. 927 - Williams v. Florida

Dear Byron:

This is only to confirm that I enthusiastically join your very fine opinion in the above.

Sincerely,

W.J.B. Jr.

Mr. Justice White

cc: The Conference

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

Circulated: JUN 4 1970
Recirculated:

Nos. 188 AND 927.—OCTOBER TERM, 1969

Robert Baldwin, Appellant, 188 *v.* State of New York.	On Appeal From the Court of Appeals of New York.
Johnny Williams, Petitioner, 927 *v.* State of Florida.	On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[June —, 1970]

MR. JUSTICE STEWART, dissenting in No. 188, and concurring in No. 927.

I substantially agree with the separate opinion MR. JUSTICE HARLAN has filed in these cases—an opinion that fully demonstrates some of the basic errors in a mechanistic "incorporation" approach to the Fourteenth Amendment. I cannot subscribe to his opinion in its entirety, however, if only for the reason that it relies in part upon certain dissenting and concurring opinions in previous cases in which I did not join.

The "incorporation" theory postulates the Bill of Rights as the substantive metes and bounds of the Fourteenth Amendment. I think this theory is incorrect as a matter of constitutional history, and that as a matter of constitutional law it is both stultifying and unsound. It is, at best, a theory that can lead the Court only to a Fourteenth Amendment dead end. And, at worst, the spell of the theory's logic compels the Court either to impose intolerable restrictions upon the constitutional sovereignty of the individual States in the administration of their own criminal law, or else intolerably to relax the explicit restrictions that the Framers actually

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Fortas
Mr. Justice Marshall

From: White, J.

Circulated: 4-29-70

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 927.—October Term, 1969

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[May —, 1970]

Mr. Justice White delivered the opinion of the Court.

Prior to his trial for robbery in the State of Florida, petitioner filed a "Motion for a Protective Order," seeking to be excused from the requirements of Rule 1.200 of the Florida Rules of Criminal Procedure. That rule requires a defendant, on written demand of the prosecuting attorney, to give notice in advance of trial if the defendant intends to claim an alibi, and to furnish the prosecuting attorney with information as to the place he claims to have been and with the names and addresses of the alibi witnesses he intends to use.[1] In his motion petitioner openly declared his intent to claim an alibi, but objected to the further disclosure requirements on the ground that the Rule "compels the defendant in a criminal case to be a witness against himself" in violation of his Fifth and Fourteenth Amendment rights.[2] The motion was denied. Petitioner also filed a pre-trial motion to impanel a 12-man jury instead of the six-man jury provided by Florida law in all but capital

[1] The full text of the Rule is set out in the appendix to this opinion, *infra*, at —. Subsequent references to an appendix are to the separately bound appendix filed with the briefs in this case [hereinafter "Separate Appx."].

[2] See Separate Appx., at 5.

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6-8, 13, 18, 21, 23—25

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

From: White, J.

Circulated:

Recirculated: 6-18-70

SUPREME COURT OF THE UNITED STATES

No. 927.—October Term, 1969

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[June —, 1970]

Mr. Justice White delivered the opinion of the Court.

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[1] The full text of the Rule is set out in the appendix to this opinion, *infra*, at —. Subsequent references to an appendix are to the separately bound appendix filed with the briefs in this case [hereinafter "App."].

[2] See App., 5.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 927.—October Term, 1969

From: Marshall, J.
Circulated: 6/18
Recirculated:

Johnny Williams, Petitioner, *v.* State of Florida. } On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[June —, 1970]

Mr. Justice Marshall, dissenting in part.

I join Part I of the Court's opinion. However, since I believe that the Fourteenth Amendment guaranteed Williams a jury of 12 to pass upon the question of his guilt or innocence before he could be sent to prison for the rest of his life, I dissent from the affirmance of his conviction.

I adhere to the holding of *Duncan* v. *Louisiana,* 391 U. S. 145, 149 (1968), that "[b]ecause . . . trial by jury in criminal cases is fundamental to the American scheme of justice, . . . the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee." And I agree with the Court that the *same* "trial by jury" is guaranteed to state defendants by the Fourteenth Amendment as to federal defendants by the Sixth. "Once it is decided that a particular Bill of Rights guarantee is 'fundamental to the American scheme of justice' . . . the same constitutional standards apply against both the State and Federal Governments." *Benton* v. *Maryland,* 395 U. S. 784, 795 (1969).

At the same time, I adhere to the decision of the Court in *Thompson* v. *Utah,* 170 U. S. 343, 349 (1898), that the jury guaranteed by the Sixth Amendment consists "of twelve persons, neither more nor less." As I see it, the

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