

The Burger Court Opinion Writing Database

Britt v. North Carolina

404 U.S. 226 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



CHAMBERS OF
THE CHIEF JUSTICE

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

November 2, 1971

Re: No. 70-5041 - Britt v. North Carolina

Dear Thurgood:

Please join me.

Regards,

WCB

Mr. Justice Marshall

cc: The Conference

*All have
replied except
BKW.
He joined 1/5
To be signed as
of 1/5*

BP —
/

To: The Chief Justice
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice Stewart
Mr. Justice Thurgood Marshall
Mr. Justice White
Mr. Justice William J. Brennan

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated

10-19

No. 70-5041

Recirculated

Charles W. Britt, Jr.,
Petitioner,
v.
State of North Carolina. } On Writ of Certiorari to the
Court of Appeals of North
Carolina.

[October —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

After the State's first murder prosecution of the petitioner ended in a hung jury in November 1969, Britt was retried, convicted and sentenced to 30 years' imprisonment. During the interim between the two trials, the petitioner made a showing of indigency and asked that the State provide him with a free transcript of the mistrial. The trial court denied his motion despite Britt's contention that because a more affluent defendant could purchase such a transcript as a matter of right a denial of his request would offend the principle of *Griffin v. Illinois*, 351 U. S. 12 (1956). On appeal the North Carolina Court of Appeals was likewise unconvinced by Britt's equal protection claim and affirmed the trial court's refusal to order a free transcript, stating that (a) the petitioner had not made a particularized showing of need, (b) he had been represented by the same lawyer at both trials, and therefore (c) any suspected inconsistencies in prosecution evidence could have been developed by counsel's putting on the court reporter to read earlier testimony of the first trial. Because I am persuaded by Britt's argument I would reverse the decision of the North Carolina Court of Appeals.¹

¹ I do not consider here the separate argument of the petitioner that the lower court erred in affirming the admission over objection certain allegedly prejudicial evidence.

file
received
10-20

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr., Petitioner, v. State of North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
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[October —, 1971]

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

After the State's first murder prosecution of the petitioner ended in a hung jury in November 1969, Britt was retried, convicted and sentenced to 30 years' imprisonment. During the interim between the two trials, the petitioner made a showing of indigency and asked that the State provide him with a free transcript of the mistrial. The trial court denied his motion despite Britt's contention that because a more affluent defendant could purchase such a transcript as a matter of right a denial of his request would offend the principle of *Griffin v. Illinois*, 351 U. S. 12 (1956). On appeal the North Carolina Court of Appeals was likewise unconvinced by Britt's equal protection claim and affirmed the trial court's refusal to order a free transcript, stating that (a) the petitioner had not made a particularized showing of need, (b) he had been represented by the same lawyer at both trials, and therefore (c) any suspected inconsistencies in prosecution evidence could have been developed by counsel's putting on the court reporter to read earlier testimony of the first trial. Because I am persuaded by Britt's argument I would reverse the decision of the North Carolina Court of Appeals.¹

¹ I do not consider here the separate argument of the petitioner that the lower court erred in affirming the admission over objection certain allegedly prejudicial evidence.

Wm. Douglas
Conc. 11

File
Griffin
10-20

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr., Petitioner, v. State of North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
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[October —, 1971]

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

After the State's first murder prosecution of the petitioner ended in a hung jury in November 1969, Britt was retried, convicted and sentenced to 30 years' imprisonment. During the interim between the two trials, the petitioner made a showing of indigency and asked that the State provide him with a free transcript of the mistrial. The trial court denied his motion despite Britt's contention that because a more affluent defendant could purchase such a transcript as a matter of right a denial of his request would offend the principle of *Griffin v. Illinois*, 351 U. S. 12 (1956). On appeal the North Carolina Court of Appeals was likewise unconvinced by Britt's equal protection claim and affirmed the trial court's refusal to order a free transcript, stating that (a) the petitioner had not made a particularized showing of need, (b) he had been represented by the same lawyer at both trials, and therefore (c) any suspected inconsistencies in prosecution evidence could have been developed by counsel's putting on the court reporter to read earlier testimony of the first trial. Because I am persuaded by Britt's argument I would reverse the decision of the North Carolina Court of Appeals.¹

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W. J. Douglas
Griffin

Filed
Recd
10-21

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr., Petitioner, v. State of North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
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[October —, 1971]

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

After the State's first murder prosecution of the petitioner ended in a hung jury in November, 1969, Britt was retried, convicted and sentenced to 30 years' imprisonment. During the interim between the two trials, the petitioner made a showing of indigency and asked that the State provide him with a free transcript of the mistrial. The trial court denied his motion despite Britt's contention that because a more affluent defendant could purchase such a transcript as a matter of right a denial of his request would offend the principle of *Griffin v. Illinois*, 351 U. S. 12 (1956). On appeal the North Carolina Court of Appeals was likewise unconvinced by Britt's equal protection claim and affirmed the trial court's refusal to order a free transcript, stating that (a) the petitioner had not made a particularized showing of need, (b) he had been represented by the same lawyer at both trials, and therefore (c) any suspected inconsistencies in prosecution evidence could have been developed by counsel's putting on the court reporter to read earlier testimony of the first trial. Because I am persuaded by Britt's argument I would reverse the decision of the North Carolina Court of Appeals.¹

¹ I do not consider the separate argument of the petitioner that the lower court erred in affirming the admission over objection of certain allegedly prejudicial evidence.

Wm Douglas
10/21

Rec
6th
5th DRAFT
Rec
11/2/71

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr., Petitioner, v. State of North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
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[November —, 1971]

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

After the State's first murder prosecution of the petitioner ended in a hung jury in November, 1969, Britt was retried, convicted and sentenced to 30 years' imprisonment. During the interim between the two trials, the petitioner made a showing of indigency and asked that the State provide him with a free transcript of the mistrial. The trial court denied his motion despite Britt's contention that because a more affluent defendant could purchase such a transcript as a matter of right a denial of his request would offend the principle of *Griffin v. Illinois*, 351 U. S. 12 (1956). On appeal the North Carolina Court of Appeals was likewise unconvinced by Britt's equal protection claim and affirmed the trial court's refusal to order a free transcript, stating that (a) the petitioner had not made a particularized showing of need, (b) he had been represented by the same lawyer at both trials, and therefore (c) any suspected inconsistencies in prosecution evidence could have been developed by counsel's putting on the court reporter to read earlier testimony of the first trial. Because I am persuaded by Britt's argument I would reverse the decision of the North Carolina Court of Appeals.

~~I do not consider the separate argument of the petitioner that the lower court erred in affirming the admission over objection of certain allegedly prejudicial evidence.~~

Wm. Law

BP
1,11

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Robert Douglas, Jr.

Charles W. Britt, Jr.,
Petitioner.
v.
State of North Carolina.

On Writ of Certiorari to the
Court of Appeals of North
Carolina.

11/8/71

[November —, 1971]

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

After the State's first murder prosecution of the petitioner ended in a hung jury in November, 1969, Britt was retried, convicted and sentenced to 30 years' imprisonment. During the interim between the two trials, the petitioner made a showing of indigency and asked that the State provide him with a free transcript of the mistrial. The trial court denied his motion despite Britt's contention that because a more affluent defendant could purchase such a transcript as a matter of right a denial of his request would offend the principle of *Griffin v. Illinois*, 351 U. S. 12 (1956). On appeal the North Carolina Court of Appeals was likewise unconvinced by Britt's equal protection claim and affirmed the trial court's refusal to order a free transcript, stating that (a) the petitioner had not made a particularized showing of need, (b) he had been represented by the same lawyer at both trials, and therefore (c) any suspected inconsistencies in prosecution evidence could have been developed by counsel's putting on the court reporter to read earlier testimony of the first trial. Because I am persuaded by Britt's argument I would reverse the decision of the North Carolina Court of Appeals.

— miss in

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 20, 1971

RE: No. 70-5041 - Britt v. North Carolina

Dear Bill:

You have completely persuaded me.

Please join me in your dissent.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

November 3, 1971

RE: No. 70-5041 - Britt v. North Carolina

Dear Thurgood:

Perhaps you've had an opportunity now to see my opinion in Mayer v. City of Chicago. I am still a little uneasy about the possibility of a conflict with your Britt on the burden of proof business. I think it could be wholly removed if you saw your way clear to substitute something like the following for your last paragraph:

"A defendant who claims the right to a free transcript does not, under our cases, bear the burden of proving inadequate every alternative that may be suggested by the State or conjured up by a court in hindsight. In this case, however, petitioner has conceded that he had available an informal alternative which appears to be substantially equivalent to a transcript. Accordingly, we cannot conclude that the court below was in error in rejecting his claim."

Sincerely,

WJB

Mr. Justice Marshall

WJB
Sincerely
JWB

(Probably
authored
by WJB)

141
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 1, 1971

70-5041, Britt v. North Carolina

Dear Thurgood,

I am glad to join the Per Curiam
you have prepared in this case. If it should
become the opinion of the Court, I see no
reason why it should not be signed by you.

Sincerely yours,

P.S.
/

Mr. Justice Marshall

Copies to the Conference

4
CP
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 5, 1971

Re: No. 70-5041 - Britt v. North
Carolina

Dear Thurgood:

Please join me in your
November 4 third draft.

Sincerely,



Mr. Justice Marshall

Copies to Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr.,	} On Writ of Certiorari to the
Petitioner,	
v.	
State of North Carolina.	Court of Appeals of North Carolina.

[November —, 1971]

PER CURIAM.

Petitioner's three-day murder trial ended in a mistrial when the jury reported a hopeless deadlock. A retrial was scheduled for the following month. In the interim, petitioner filed a motion alleging that he was indigent, and asking for a free transcript of the first trial. The trial court denied his motion, and the North Carolina Court of Appeals affirmed, stating that the record of the case did not reveal a sufficient need for the transcript. The North Carolina Supreme Court denied certiorari. We granted certiorari to determine whether the rule of *Griffin v. Illinois*, 351 U. S. 12 (1956), applies in this context. — U. S. —. We conclude that it does, but that in the narrow circumstances of this case, no violation of that rule has been shown, and we affirm.

Griffin v. Illinois and its progeny established the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners. While the outer limits of that principle are not clear, there can be no doubt that the State must provide an indigent defendant with a transcript of prior proceedings when that tran-

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr.,	} On Writ of Certiorari to the
Petitioner,	
v.	
State of North Carolina.	
	Court of Appeals of North
	Carolina.

[November —, 1971]

PER CURIAM.

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Griffin v. Illinois and its progeny establish the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners. While the outer limits of that principle are not clear, there can be no doubt that the State must provide an indigent defendant with a transcript of prior proceedings when that tran-

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr., Petitioner, v. State of North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
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[November —, 1971]

PER CURIAM.

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

Charles W. Britt, Jr., Petitioner, v. State of North Carolina.	}	On Writ of Certiorari to the Court of Appeals of North Carolina.
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[November —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioner's three-day murder trial ended in a mistrial when the jury reported a hopeless deadlock. A retrial was scheduled for the following month. In the interim, petitioner filed a motion alleging that he was indigent, and asking for a free transcript of the first trial. The trial court denied his motion, and the North Carolina Court of Appeals affirmed, stating that the record of the case did not reveal a sufficient need for the transcript. The North Carolina Supreme Court denied certiorari. We granted certiorari to determine whether the rule of *Griffin v. Illinois*, 351 U. S. 12 (1956), applies in this context. 401 U. S. 973 (1971). We conclude that it does, but that in the narrow circumstances of this case, no violation of that rule has been shown, and therefore we affirm.

Griffin v. Illinois and its progeny establish the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners. While the outer limits of that principle are not clear, there can be no doubt that the State must provide an indigent defendant with a transcript of prior proceedings when that tran-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 1, 1971

Re: No. 70-5041 - Britt v. North Carolina

Dear Thurgood:

At the end of your Per Curiam, would you please add the following:

"Mr. Justice Blackmun concurs in the result, for he would dismiss the petition for certiorari as having been improvidently granted."

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference

Wm. W. W. W.

70-5041

11/1

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 16, 1971

Re: No. 70-5041 - Britt v. North Carolina

Dear Thurgood:

When you run a final printing of your opinion in this case, would you please have the word "for" replaced by the word "but" in the first line of my addendum on page 4.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference

Wm. Brennan
5/11