

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,

Wm B

Mr. Justice Marshall

cc: The Conference

BP —
/

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

1st DRAFT

From: [Signature] 10-19
 SUPREME COURT OF THE UNITED STATES
 Circulated

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 of certain allegedly prejudicial evidence.

File
Recd
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.

[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 unconvined 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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John B. Jackson
Counsel

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prices
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
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[October —, 1971]

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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.

[October —, 1971]

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Wm. Douglas
Scriber

Rec'd

6th

5th DRAFT

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Rec'd
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.

[November —, 1971]

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~~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.~~

To: The Clerks of the Supreme Court
Mr. Justice Black
Mr. Justice Brandeis
Mr. Justice Holmes
Mr. Justice Harlan
Mr. Justice Holmes
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

LAWRENCE DUGGINS 3

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

[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 C. M.

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,



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 (RJH) (P.B.)

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

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.,
Petitioner,
v.
State of North Carolina. } On Writ of Certiorari to the
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.,
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[November —, 1971]

PER CURIAM.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5041

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

[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
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Carolina.

[November —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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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 trans-

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. Wright

70-5041

D. 11

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

H. A. Blackmun