

# The Burger Court Opinion Writing Database

*Duncan v. Tennessee*

405 U.S. 127 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B

*You have  
deserved well*

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

CHAMBERS OF  
THE CHIEF JUSTICE

February 16, 1972

Re: No. 70-5122 - Duncan v. Tennessee

Dear Potter:

Please join me in your Per Curiam  
circulated February 14.

Regards,

*WB B*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 14, 1972

Dear Bill:

In No. 70-5122 - Duncan  
v. Tennessee, please join me in  
your dissent.

W. O. D. *W*

Mr. Justice Brennan  
cc: Conference

To: The Chief Justice  
 Mr. Justice Douglas  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

1st DRAFT

From: Brennan, J.

Circulated: 2-14-72

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

SUPREME COURT OF THE UNITED STATES

No. 70-5122

Dennis Stephen Duncan,  
 Petitioner, } On Writ of Certiorari to the  
 v. } Supreme Court of Tennessee,  
 State of Tennessee. } Middle Division.

[February —, 1972]

MR. JUSTICE BRENNAN, dissenting.

In dismissing the writ of certiorari in this case, the Court lets stand a conviction secured in violation of petitioner's right, under the Fifth and Fourteenth Amendments, not to be placed in jeopardy twice for a single criminal offense. The infringement of this fundamental right is so plain on the record before us that I am compelled to dissent.

Petitioner and a codefendant, Brooks, were brought to trial in the Criminal Court of Montgomery County, Tennessee, on an indictment charging armed robbery "by the use of a deadly weapon, to wit: A Gun, to wit: a pistol."<sup>1</sup> The jury was selected and sworn, the indictment read, and a plea of not guilty entered on the defendants' behalf. The State's first witness, who was in charge of investigating the robbery, testified that he had been looking for a "22 rifle" used in the commission of the crime. Defense counsel immediately objected to this

<sup>1</sup> Tenn. Code Ann. § 39-3901 provides:

"Robbery is the felonious and forcible taking from the person of another, goods or money of any value, by violence or putting the person in fear. Every person convicted of the crime of robbery shall be imprisoned in the penitentiary not less five (5) nor more than fifteen (15) years; provided, that if the robbery be accomplished by the use of a deadly weapon the punishment shall be imprisonment for life or for any period of time of not less than ten (10) years."

*Please find me  
M*

2nd DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

RE: Brennan, J.

No. 70-5122

Circulated: \_\_\_\_\_

Recirculated: 3/14/72

Dennis Stephen Duncan,  
Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Tennessee,  
State of Tennessee. } Middle Division.

[February —, 1972]

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

In dismissing the writ of certiorari in this case, the Court lets stand a conviction secured in violation of petitioner's right, under the Fifth and Fourteenth Amendments, not to be placed in jeopardy twice for a single criminal offense. The infringement of this fundamental right is so plain on the record before us that I am compelled to dissent.

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*B* / *p. 1*

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5122

*Brennan, J.*  
Circulated: *2/15/72*

Recirculated:

Dennis Stephen Duncan,  
Petitioner,  
*v.*  
State of Tennessee. } On Writ of Certiorari to the  
Supreme Court of Tennessee,  
Middle Division.

[February —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

In dismissing the writ of certiorari in this case, the Court lets stand a conviction secured in violation of petitioner's right, under the Fifth and Fourteenth Amendments, not to be placed in jeopardy twice for a single criminal offense. The infringement of this fundamental right is so plain on the record before us that I am compelled to dissent.

Petitioner and a codefendant, Brooks, were brought to trial in the Criminal Court of Montgomery County, Tennessee, on an indictment charging armed robbery "by the use of a deadly weapon, to wit: A Gun, to wit: a pistol."<sup>1</sup> The jury was selected and sworn, the indictment read, and a plea of not guilty entered on the defendants' behalf. The State's first witness, who was in charge of investigating the robbery, testified that he had been looking for a "22 rifle" used in the commission of the crime. Defense counsel immediately objected to this

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES From: Stewart, J.

No. 70-5122

Circulated: FEB 14 1972

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

Dennis Stephen Duncan,  
Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Tennessee,  
State of Tennessee. } Middle Division.

[February —, 1972]

PER CURIAM.

We granted certiorari in this case, 404 U. S. 821, to consider questions seemingly presented under the constitutional guarantee against double jeopardy. After briefing and oral argument, it now appears that those questions are so interrelated with rules of criminal pleading peculiar to the State of Tennessee, the constitutionality of which is not at issue, as not to warrant the exercise of the certiorari jurisdiction of this Court. See, e. g., *Wilson v. State*, 200 Tenn. 309, 292 S. W. 2d 188 (1956); *Young v. State*, 185 Tenn. 596, 206 S. W. 2d 805 (1947). See U. S. Sup. Ct. Rule 19 (1)(a). The writ is, therefore, dismissed as having been improvidently granted.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 17, 1972

Re: No. 70-5122 - Duncan v.  
Tennessee

Dear Potter:

Please join me.

Sincerely,

*Byron*

Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 15, 1972

Re: No. 70-5122 - Duncan v. Tennessee

Dear Bill:

Please join me in your dissent.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 15, 1972

Re: No. 70-5122 - Duncan v. Tennessee

Dear Potter:

Please join me in your proposed Per Curiam.

Sincerely,

*HAB.*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 18, 1972

Re: No. 70-5122 - Duncan v. Tennessee

Dear Potter:

Please join me.

Since rely,

L. F. P.

Mr. Justice Stewart

Copies to Conference

*Bj*  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 18, 1972

Re: 70-5122 - Duncan v. Tennessee

Dear Potter:

Please join me in your proposed

Per Curiam.

Sincerely,

*WRW*

Mr. Justice Stewart

Copies to the Conference