

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
disputed wif
wob + wfb*

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,

WFB

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.O.D.*

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

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 70-5122

Circulated: 2-14-72

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, 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."¹ 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

¹ 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 join me
WJ

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 70-5122

Circulated: _____

Recirculated: 2/14/72

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 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.

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."¹ 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

¹ 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."

3 / 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 Brennan, J.

No. 70-5122

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."¹ 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

¹ 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."

B

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 Tennes-
State of Tennessee. } see, 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.

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

3
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

3

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,

H.A.B.

Mr. Justice Stewart

cc: The Conference

3

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.

Sincerely,

L. F. P.

Mr. Justice Stewart

Copies to Conference

3
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,



Mr. Justice Stewart

Copies to the Conference

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