

# The Burger Court Opinion Writing Database

## *Darden v. Florida*

430 U.S. 704 (1977)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

January 6, 1977

RE: 76-5382 - Darden v. Florida

Dear Potter:

I join.

Regards,



Mr. Potter Stewart

Copies to the Conference

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

From: The Chief Justice

Circulated: APR 12 1977

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

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-5382

Willie Jasper Darden,	}	On Writ of Certiorari to the Supreme Court of Florida.
Petitioner,		
v.		
State of Florida.		

[April —, 1977]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

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

From: The Chief Justice

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

2nd DRAFT

Recirculated: APR 13 1977

# SUPREME COURT OF THE UNITED STATES

No. 76-5382

Willie Jasper Darden,	}	On Writ of Certiorari to the Supreme Court of Florida.
Petitioner,		
v.		
State of Florida.		

[April —, 1977]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissents and adhering to his view that capital punishment is in all circumstances prohibited as cruel and unusual punishment by the Eighth and Fourteenth Amendments, would set aside the death sentence imposed in this case.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 3, 1977

RE: No. 76-5382 Darden v. Florida

Dear Potter:

I agree with the Order you have prepared  
in the above.

Sincerely,

*Biel*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

April 12, 1977

*Dear Chief  
Please add my name  
to Brennan dissent in  
this case. JMB*

RE: No. 76-5382 Darden v. Florida

Dear Chief:

Would you please add the following at the foot of  
your proposed Per Curiam in the above:

"MR. JUSTICE BRENNAN dissents and, adhering  
to his view that capital punishment is in all  
circumstances prohibited as cruel and unusual  
punishment by the Eighth and Fourteenth Amend-  
ments, would set aside the death sentence im-  
posed in this case."

Sincerely,

*Bill*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 3, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-5382, Darden v. Florida

Our unlimited grant of certiorari in No. 76-5832, Darden v. Florida, has been relied on in two other capital cases to support petitions for rehearing. Both No. 76-5284, Spencer v. Georgia, and No. 76-5373, Machetti v. Georgia, rely on the arguments to broaden or re-think Witherspoon presented under Question 4 of the Darden petition. It is my understanding that we granted certiorari in the Darden case to consider the validity of the prosecutor's summation, rather than the Witherspoon-related issues or the Brathwaite-type identification issues also raised in the petition. If we enter the attached order limiting certiorari to the summation question, we can then properly deny the rehearing petitions in Nos. 76-5284 and 76-5373.

P.S.  
P. S.

O R D E R

No. 76-5382, DARDEN v. FLORIDA

Certiorari granted November 1, 1976, is limited to Question 1 presented by the petition, dealing with whether the prosecution's summation to the jury in the circumstances of this case deprived the petitioner of due process of law.



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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 13, 1977

Re: No. 76-5382, Darden v. Florida

Dear Chief,

I agree with your proposed Per Curiam  
dismissal of the writ in this case.

Sincerely yours,

P.S.  
1.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 4, 1977

Re: No. 76-5382 - Darden v. Florida

Dear Potter:

I join your proposed order.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 12, 1977

Re: No. 76-5382 - Darden v. Florida

Dear Chief:

I will not dissent from this disposition.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 4, 1977

Re: No. 76-5382, Darden v. Florida

Dear Potter:

I have no objection to your suggested order.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 12, 1977

Re: No. 76-5382, Darden v. Florida

Dear Chief:

Please add my name to Brennan's dissent in  
this case.

Sincerely,

*TM*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 4, 1977

Re: No. 76-5382 - Darden v. Florida

Dear Potter:

I am in the position of Bill Rehnquist as he expressed it in his note to you of January 3.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 13, 1977

Re: No. 76-5382 - Darden v. Florida

Dear Chief:

I, too, would not dissent from the proposed disposition.

Sincerely,

*HAB*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 3, 1977

No. 76-5382 Darden v. Florida

Dear Potter:

Please join me in your proposed order.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 13, 1977

No. 76-5382 Darden v. Florida

Dear Chief:

I agree with the DIG in this case.

Sincerely,

*L. Lewis*

The Chief Justice

Copies to the Conference

LFP/lab

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 3, 1977

Re: No. 76-5382 - Darden v. Florida

Dear Potter:

I was not one of those who voted to grant certiorari in this case, but if your proposed order is acceptable to the other "grantors", it is certainly acceptable to me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

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


CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 12, 1977

Re: No. 76-5382 - Darden v. Florida

Dear Chief:

Please join me.

Sincerely, 

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 3, 1977

Re: 76-5382 - Darden v. Florida

Dear Potter:

Please join me in your proposed order.

Respectfully,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 13, 1977

Re: 76-5382 - Darden v. Florida

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference