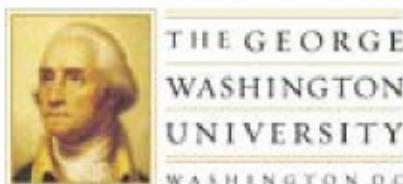


# The Burger Court Opinion Writing Database

*Illinois v. Vitale*

447 U.S. 410 (1980)

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

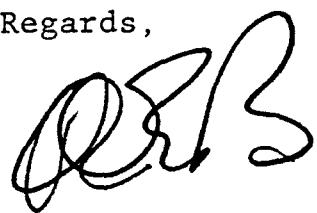
May 12, 1980

Re: 78-1845 - Illinois v. Vitale

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

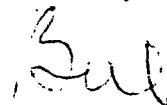
June 17, 1980

RE: No. 78-1845 Illinois v. Vitale

Dear John:

Please join me in your dissent in the above.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 16, 1980

Re: No. 78-1845, Illinois v. Vitale

Dear John,

Please add my name to your  
dissenting opinion in this case.

Sincerely yours,

*P.S.  
J.*

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice White

Circulated: 7 MAR 1980

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1845

State of Illinois, Petitioner,  
 n.  
 John M. Vitale. | On Writ of Certiorari to the  
 Supreme Court of Illinois.

[March —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question in this case is whether the Double Jeopardy Clause of the Fifth Amendment prohibits the State of Illinois (State) from prosecuting for involuntary manslaughter the driver of an automobile involved in a fatal accident following his conviction for failing to reduce speed to avoid the accident. We hold that it does not.

I

On November 24, 1974, an automobile driven by respondent John Vitale, a juvenile, struck two small children. One of the children died almost immediately; the other died the following day. A police officer at the scene of the accident issued a traffic citation charging Vitale with failing to reduce speed to avoid an accident in violation of § 11-601 (a) of the Illinois Vehicle Code. Ill. Rev. Stat., ch. 95½, § 11-601 (a). This statute provides in part that “[s]peed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway, in compliance with legal requirements and the duty of all persons to use due care.”<sup>1</sup>

<sup>1</sup>Section 11-601 (a) of the Illinois Vehicle Code, Ill. Rev. Stat., ch. 95½, § 11-601 (a), provides:

“No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person

*Op. 7. 9. 10*

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

From: Mr. Justice White

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

Recirculated: *3-14-80*

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 78-1845

State of Illinois, Petitioner, *v.* John M. Vitale. } On Writ of Certiorari to the Supreme Court of Illinois,

[March —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court,

The question in this case is whether the Double Jeopardy Clause of the Fifth Amendment prohibits the State of Illinois (State) from prosecuting for involuntary manslaughter the driver of an automobile involved in a fatal accident following his conviction for failing to reduce speed to avoid the accident. We hold that it does not.

I

On November 24, 1974, an automobile driven by respondent John Vitale, a juvenile, struck two small children. One of the children died almost immediately; the other died the following day. A police officer at the scene of the accident issued a traffic citation charging Vitale with failing to reduce speed to avoid an accident in violation of § 11-601 (a) of the Illinois Vehicle Code. Ill. Rev. Stat., ch. 95½, § 11-601 (a). This statute provides in part that “[s]peed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway, in compliance with legal requirements and the duty of all persons to use due care.”<sup>1</sup>

<sup>1</sup> Section 11-601 (a) of the Illinois Vehicle Code, Ill. Rev. Stat., ch. 95½, § 11-601 (a), provides:

“No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

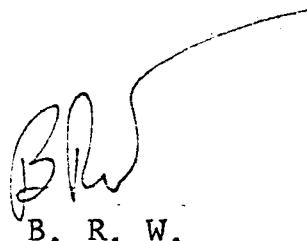
June 16, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 78-1845 - Illinois v. Vitale

I plan no changes in the circulating draft in this case except that the opening statement is revised in minor respects to read as follows:

The question in this case is whether the Double Jeopardy Clause of the Fifth Amendment prohibits the State of Illinois (State) from prosecuting for involuntary manslaughter the driver of an automobile involved in a fatal accident, who previously has been convicted for failing to reduce speed to avoid the collision.



B. R. W.

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

From: Mr. Justice White

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

Recirculated: 17 JUN 1980

**3rd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 78-1845**

State of Illinois, Petitioner, |  
 v. | On Writ of Certiorari to the  
 John M. Vitale. | Supreme Court of Illinois.

[March —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question in this case is whether the Double Jeopardy Clause of the Fifth Amendment prohibits the State of Illinois (State) from prosecuting for involuntary manslaughter the driver of an automobile involved in a fatal accident, who previously has been convicted for failing to reduce speed to avoid the collision.

**I**

On November 24, 1974, an automobile driven by respondent John Vitale, a juvenile, struck two small children. One of the children died almost immediately; the other died the following day. A police officer at the scene of the accident issued a traffic citation charging Vitale with failing to reduce speed to avoid an accident in violation of § 11-601 (a) of the Illinois Vehicle Code. Ill. Rev. Stat., ch. 95½, § 11-601 (a). This statute provides in part that “[s]peed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway, in compliance with legal requirements and the duty of all persons to use due care.”<sup>1</sup>

<sup>1</sup> Section 11-601 (a) of the Illinois Vehicle Code, Ill. Rev. Stat., ch. 95½, § 11-601 (a), provides:

“No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 21, 1980

MEMORANDUM TO THE CONFERENCE

Two cases are being held for Illinois v. Vitale, No. 78-1845 (June 19, 1980). The cases are Burroughs v. Georgia, No. 79-5804, and Mathews v. Ohio, No. 79-6150.

1. Burroughs v. Georgia, No. 79-5804. The petitioner in Burroughs was arrested for hitting and kicking a police officer and refusing to disperse when told to do so. Petitioner was convicted in municipal court for disorderly conduct in violation of a municipal ordinance that provided that "[a]ny person who shall by acts of violence interfere with another's pursuit of a lawful occupation" is guilty of disorderly conduct. Despite petitioner's double jeopardy objections, he subsequently was convicted in the state court of Fulton County, Georgia, for simple battery based on the same conduct that gave rise to the disorderly conduct prosecution. Under state law simple battery is committed when a person "either (a) intentionally makes physical contact of an insulting or provoking nature with the person of another or (b) intentionally causes physical harm to another."

The Fulton County court set aside petitioner's conviction for simple battery on the grounds that it violated a Georgia statute prohibiting multiple prosecutions for the same conduct. The Georgia Court of Appeals affirmed. The Georgia Supreme Court then reversed, holding that the simple battery conviction should

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 10, 1980

Re: No. 78-1845 - State of Illinois v. Vitale

Dear Byron:

I await the dissent.

Sincerely,

*T.M.*

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 17, 1980

No. 78-1845 - State of Illinois v. Vitale

Dear John:

Please join me in your dissent.

Sincerely,

*JM.*

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 10, 1980

Re: No. 78-1845 - Illinois v. Vitale

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White  
cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 10, 1980

Re: No. 78-1845 - Illinois v. Vitale

Dear Byron:

Please join me.

Sincerely,

*Harry A. Blackmun*

Mr. Justice White

cc: The Conference

[note to Mr. Justice White]

I have just one very mild suggestion. In the second line on page 7 are the words "conviction and cumulative punishment." Would it be advisable to substitute the single word "prosecution" for the others?

March 12, 1980

78-1845 Illinois v. Vitale

Dear Byron:

Since our telephone talk this morning, I have now read your opinion with some care.

I expect to join you, but am a bit confused as to one aspect of the draft - perhaps because of my own lack of sureness in the murky world of double jeopardy.

My difficulty begins with the last paragraph of part III on page 9. Up to that point the draft relies on the Brown/Blockburger test stated as follows:

The test turns on "the proof necessary to prove the statutory elements of the offense rather than the actual evidence to be presented at trial." p. 6.

On page 9, near the end of the first full paragraph, the draft seems to say that the foregoing discussion of the statutory elements relates only to whether the "mere filing of the charge against Vitale" violated the Clause. The draft then suggests that the "trial" - apparently as distinguished from the indictment - may violate double jeopardy if the state finds it "necessary to prove a failure to slow or to rely on conduct necessarily involving such a failure." p. 10.

In short, there seems to be some possibility of inconsistency - at least it so appears to me - between the earlier reliance on the controlling effect of the "statutory elements", and the subsequent holding that the case should be remanded for trial at which double jeopardy could bar a reliance on "failure to reduce speed".

Perhaps the answer is that in part IV you have reference only to the "additional protection" - over and

above the Brown test - against "repetition of proof" and "relitigation of factual issues already resolved" by a prior prosecution. See Brown, 432 U.S., at 166-167, n. 6, where I cited Ashe v. Swensen and Neilsen. I am frank to say that I have never been quite clear as to how far Ashe and Neilsen depart from the Brown/Blockburger test, but at least there is some difference.

If my surmise as to a difference is correct, perhaps your draft could say explicitly that there is a difference. I would hesitate, however, to suggest that relitigation of facts that have been determined adversely to a criminal defendant in an earlier case always will be barred. I think you referred to this as presenting a "substantial" double jeopardy problem. Perhaps you would be willing to say that in some circumstances such a problem may arise.

We then could vacate and remand leaving open the question of the application of the Ashe/Neilsen "relitigation of facts" doctrine.

Sincerely,

Mr. Justice White

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 13, 1980

78-1845 Illinois v. Vitale

Dear Byron:

Please join me.

Sincerely,

LFP

Mr. Justice White

lfp/ss

cc: The Conference

March 13, 1980

78-1845 Illinois v. Vitale

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

lfp/ss

cc: The Conference

Byron: In view of our discussion, your proposed changes on page 9 and my imprudent footnote n. 6 in Brown v. Ohio, I am glad to join your opinion.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 10, 1980

Re: No. 78-1845 - State of Illinois v. Vitale

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 22, 1980

Re: 78-1845 - Illinois v. Vitale

Dear Bill:

I shall be happy to undertake the dissent  
in this case.

Respectfully,



Mr. Justice Brennan

CC: Mr. Justice Stewart  
Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 10, 1980

Re: 78-1845 - State of Illinois v. Vitale

Dear Byron:

As soon as I can get to it, I will circulate  
a short dissent.

Respectfully,



Mr. Justice White

Copies to the Conference

78-1845 - State of Illinois v. Vitale

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

From: Mr. Justice Stevens

Circulated: JUN 16 '80

Recirculated: JUN 16 '80

MR. JUSTICE STEVENS, dissenting.

The controlling issue in this case is whether respondent's failure to reduce speed to avoid a collision, in violation of § 11-601(a) of the Illinois Motor Vehicle Code,<sup>1/</sup> was a lesser offense included within the greater offense of killing a person by the reckless "driving of a motor vehicle," in violation of § 9-3(b) of the Illinois Criminal Code.<sup>2/</sup> The Illinois

1/ Ill. Rev. Stat., ch. 95-1/2, § 11-601(a), provides:

"No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. The fact that the speed of a vehicle does not exceed the applicable maximum speed limit does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care." (emphasis supplied).

2/ "If the acts which cause the death consist of the driving of a motor vehicle, the person may be prosecuted for reckless homicide or if he is prosecuted for involuntary manslaughter, he may be found guilty of the included offense of reckless homicide." Ill. Rev. Stat. 1973, ch. 38, § 9-3(b).

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

*Changes : pp 1, 6, 7*

From: Mr. Justice Stevens

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

1st PRINTED DRAFT

JUN 18 '80

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

## SUPREME COURT OF THE UNITED STATES

No. 78-1845

State of Illinois, Petitioner,  
 v.  
 John M. Vitale. } On Writ of Certiorari to the  
 Supreme Court of Illinois.

[June —, 1980]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN,  
 MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL join,  
 dissenting.

The controlling issue in this case is whether respondent's failure to reduce speed to avoid a collision, in violation of § 11-60 (a) of the Illinois Motor Vehicle Code,<sup>1</sup> was a lesser offense included within the greater offense of killing a person by the reckless "driving of a motor vehicle," in violation of § 9-3 (b) of the Illinois Criminal Code.<sup>2</sup> The Illinois Supreme Court held that it was and that, because respondent

<sup>1</sup> Ill. Rev. Stat., ch. 95-1/2, § 11-601 (a), provides:

"No vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. The fact that the speed of a vehicle does not exceed the applicable maximum speed limit does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. *Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.*" (Emphasis supplied.)

<sup>2</sup> "If the acts which cause the death consist of the driving of a motor vehicle, the person may be prosecuted for reckless homicide or if he is prosecuted for involuntary manslaughter, he may be found guilty of the included offense of reckless homicide." Ill. Rev. Stat. 1973, ch. 38, § 9-3 (b).