The Burger Court Opinion Writing Database

Tibbs v. Florida

457 U.S. 31 (1982)

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 25, 1982

Re: 81-5114 - Tibbs v. Florida

Dear Sandra:

I join.

Regards,

WEB

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 9, 1982

MEMORANDUM TO: Justice White
Justice Marshall
Justice Blackmun

RE: No. 81-5114 Tibbs v. Florida

We four are in dissent in the above. Would you, Byron, be willing to undertake the dissent?

Bill

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 25, 1982

RE: No. 81-5114 Tibbs v. Florida

Dear Byron:

Please join me in your excellent and persuasive dissent.

Sincerely,

Bill

Justice White

cc: The conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 9, 1982

Re: 81-5114 - Tibbs v. Florida

Dear Bill,

I shall plan to dissent in this case. Of course, there is always the chance that I shall be convinced the other way.

Sincerely yours,

Justice Brennan

cc: Justice Marshall
Justice Blackmun

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

'82 May 19, 1982

Re: 81-5114 - Tibbs v. Florida

Dear Sandra,

I am writing in dissent in this case.

Sincerely yours,

Justice O'Connor

Copies to the Conference

cpm

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: 5/24/82

Recirculated: _____

No. 81-5114 - Tibbs v. Florida

JUSTICE WHITE, dissenting.

As our cases in this area indicate, the meaning of the Double Jeopardy Clause is not always readily apparent. See, e.g., United States v. Burks, 437 U.S. 1 (overruling Bryan v. United States, 338 U.S. 552 (1938); Sapir v. United States, 348 U.S. 373 (1955); Forman v. United States, 361 U.S. 416 (1960)); United States v. Scott, 437 U.S. 82 (1978) (overruling United States v. Jenkins, 420 U.S. 358 (1975)). For this reason, we should begin with a clear understanding of what is at stake in this case.

To sustain the conviction, in this case, the prosecution was required to convince the Florida Supreme Court not only that the evidence was sufficient under the federal constitutional standard announced in Jackson v. Virginia, 443 U.S. 307 (1979), but also that as a matter of state law, the verdict was not against the weight of the evidence. The Florida Supreme Court found the verdict to be against the weight of the evidence, thus holding that as a matter of state law the prosecution failed to present evidence adequate to sustain the conviction. Were the state to present this same evidence again, we must assume that once again the state courts would reverse any conviction that was based upon it.[1] The state was not prevented from presenting its best case

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Footnote(s) 1 will appear on following pages.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: 25 MAY 19__

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

1st Printed DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-5114

DELBERT LEE TIBBS, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May ——, 1982]

JUSTICE WHITE, dissenting.

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To sustain the conviction, in this case, the prosecution was required to convince the Florida Supreme Court not only that the evidence was sufficient under the federal constitutional standard announced in *Jackson* v. *Virginia*, 443 U. S. 307 (1979), but also that as a matter of state law, the verdict was not against the weight of the evidence. The Florida Supreme Court found the verdict to be against the weight of the evidence, thus holding that as a matter of state law the prosecution failed to present evidence adequate to sustain the conviction. Were the state to present this same evidence again, we must assume that once again the state courts would reverse any conviction that was based upon it.* The state

*Only Chief Judge Sundberg, concurring in part and dissenting in part, reached this issue below: "Since the same evidence must be used, an appel-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 26, 1982

Re: No. 81-5114 - Tibbs v. Florida

Dear Byron:

Please join me in your dissent.

Sincerely,

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1982

Re: No. 81-5114 - Tibbs v. Florida

Dear Byron:

Please join me in your dissent.

Sincerely,

Harry

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 19, 1982

81-5114 Tibbs v. Florida

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

.85

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1982

Re: No. 81-5114 Tibbs v. Florida

Dear Sandra:

Please join me.

Sincerely,

WHR

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 21, 1982

Re: 81-5114 - Tibbs v. Florida

Dear Sandra:

With one reservation, I am prepared to join your opinion.

Your references to Jackson v. Virginia on page 14 and in footnote 22 on page 15, seem to assume that the federal constitutional standard fashioned in Jackson is the same as the standard for testing evidentiary sufficiency as a matter of Florida law. That may well be true with respect to Florida, but I do not believe there is any federal requirement that all states use precisely the same test of sufficiency. Moreover, although you are probably correct in stating that a prisoner who obtains habeas corpus relief on a Jackson rationale cannot be retried (see page 14), we have not yet so held; I wonder if we should not leave that question open. Arguably, a federal court's issuance of the writ of habeas corpus is based on a determination that the criminal proceeding was entirely void. Does a void judgment bar a second trial?

If you can modify your use of Jackson v. Virginia, I will join you.

Respectfully,

JPS

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 25, 1982

Re: 81-5114 - Delbert Lee Tibbs v. Florida

Dear Sandra:

Please join me.

Respectfully,

Justice O'Connor

Copies to the Conference

pp. 12, 15

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: MAY 13 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-5114

DELBERT LEE TIBBS, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May ——, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

We granted certiorari to decide whether the Double Jeopardy Clause[1] bars retrial after a state appellate court sets aside a conviction on the ground that the verdict was against "the weight of the evidence." After examining the policies supporting the Double Jeopardy Clause, we hold that a reversal based on the weight, rather than the sufficiency, of the evidence permits the State to initiate a new prosecution.

I

In 1974, Florida indicted petitioner Delbert Tibbs for the first degree murder of Terry Milroy, the felony murder of Milroy, and the rape of Cynthia Nadeau. Nadeau, the State's chief trial witness, testified that she and Milroy were hitchhiking from St. Petersburg to Marathon, Florida, on February 3, 1974. A man in a green truck picked them up near Fort Myers and, after driving a short way, turned off the highway into a field. He asked Milroy to help him siphon gas from some farm machinery, and Milroy agreed. When Nadeau stepped out of the truck a few minutes later, she dis-

[1] "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb. . . ." U. S. Const., Amdt. 5. The Clause applies to the States through the Due Process Clause of the Fourteenth Amendment. *Benton* v. *Maryland*, 395 U. S. 784 (1969).

PP. 8, 12, 13, 14, 15, 16
Footnotes Renumbered

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAY 25 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–5114

DELBERT LEE TIBBS, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[May ——, 1982]

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 25, 1982

No. 81-5114 Tibbs v. Florida

Dear John,

In response to your letter of May 21, I will circulate a revision of page 14 of our draft, and move footnote 22, which I hope will satisfy your concerns. Although I would prefer to describe what I believe is the effect of Jackson v. Virginia, I have simply deleted the language you were concerned about on page 14.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference