

# The Burger Court Opinion Writing Database

## *Thigpen v. Roberts*

468 U.S. 27 (1984)

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

April 30, 1984

Re: 82-1330 - Thigpen v. Roberts

MEMORANDUM TO THE CONFERENCE:

I am persuaded by the views of those who would avoid the double jeopardy issue and remand(or decide) on Blackledge and so vote.

Regards,



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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

'84 MAY 17 A9:28

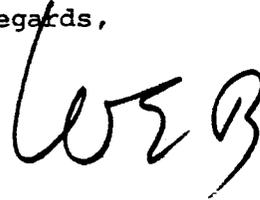
May 16, 1984

Re: 83-1330 - Thigpen v. Roberts

Dear Byron:

I am having some problems with your draft. I think they can be worked out - in a week or so.

Regards,

A handwritten signature in black ink, appearing to be 'WJB', written over the typed word 'Regards,'.

Justice White

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

June 20, 1984

'84 JUN 21 11:25

Re: 82-1330 - Thigpen v. Roberts

Dear Byron:

I will be joining the judgment with  
Sandra's separate opinion.

Regards,



Justice White

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

CHAMBERS OF  
THE CHIEF JUSTICE

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 21 P3:06

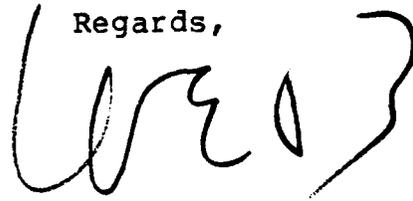
June 21, 1984

RE: 83-1330 - Thigpen v. Roberts

Dear Byron:

For the record, I join your opinion and the judgment.

Regards,

A handwritten signature in black ink, appearing to be 'W. White', written in a cursive style.

Justice White

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 15, 1984

No. 82-1330

Thigpen v. Roberts

---

Dear Byron,

I agree.

Sincerely,

*Bill*

Justice White

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85:119 21 YAM AB

111  
2151

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

84 MAY 14 AIO :05

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

From: Justice White

Circulated: May 14 1984

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

~~BRD  
Please see me  
M~~

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1330

MORRIS THIGPEN, COMMISSIONER, MISSISSIPPI  
DEPARTMENT OF CORRECTIONS, ET AL.,  
PETITIONER *v.* BARRY JOE ROBERTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[May —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

On August 6, 1977, respondent Barry Joe Roberts lost control of his car and collided with a pickup truck, killing a passenger in the truck. Shortly after the accident, Roberts received citations for reckless driving, driving while his license was revoked, driving on the wrong side of the road, and driving while intoxicated. He was convicted of these four misdemeanors in a Justice of the Peace Court in Tallahatchie County, Mississippi.<sup>1</sup> Roberts gave notice of appeal and the case was transferred to the Circuit Court for trial *de novo*.<sup>2</sup>

<sup>1</sup> Roberts was fined \$100 for reckless driving, fined \$100 and sentenced to 6 months in jail for driving while his license was revoked, fined \$100 and sentenced to 10 days in jail for driving on the wrong side of the road, and fined \$1000 and sentenced to 11 months in jail for driving under the influence.

<sup>2</sup> Under the Mississippi scheme then in effect, Justice of the Peace Courts had concurrent jurisdiction with the County Courts over misdemeanors. Miss. Code Ann. §§ 9-9-21, 99-33-1 (1972). In practice, misdemeanors were always brought in one or the other of these courts by county prosecutors. Brief for Petitioners 5, n. 1; Tr. of Oral Arg. 7-10. Such proceedings were initiated by affidavit, the traffic citations serving that function in the present case. If convicted in the Justice of the Peace Court, the defendant had an absolute right to appeal to the Circuit Court for a trial *de novo*. § 99-35-1.

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 22 P2:46

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

From: Justice White

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

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1330

MORRIS THIGPEN, COMMISSIONER, MISSISSIPPI  
DEPARTMENT OF CORRECTIONS, ET AL.,  
PETITIONER v. BARRY JOE ROBERTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1984]

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<sup>1</sup> Roberts was fined \$100 for reckless driving, fined \$100 and sentenced to 6 months in jail for driving while his license was revoked, fined \$100 and sentenced to 10 days in jail for driving on the wrong side of the road, and fined \$1000 and sentenced to 11 months in jail for driving under the influence.

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5

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 16, 1984

Re: No. 82-1330-Thigpen v. Roberts

Dear Byron:

Please join me.

Sincerely,



T.M.

Justice White

cc: The Conference

RECEIVED  
SUPREME COURT U.S.  
JUSTICE MARSHALL  
Supreme Court of the United States  
Washington, D. C. 20543

84 MAY 14 P2:52

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 14, 1984

Re: No. 82-1330, Thigpen v. Roberts

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Larry". The signature is written in dark ink and is positioned below the word "Sincerely,".

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 15, 1984

82-1330 Thigpen v. Roberts

Dear Byron:

I will await Bill Rehnquist's dissent.

Sincerely,



Justice White

lfp/ss

cc: The Conference

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

84 MAY 15 AM 11:34

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

84 JUN-8 19:48

June 8, 1984

82-1330 Thigpen v. Roberts

Dear Sandra:

Please join me in your dissent.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

84 MAY 14 12:30

May 14, 1984

Re: No. 82-1330 Thigpen v. Roberts

Dear Byron:

In due course I will circulate a dissenting opinion.

Sincerely,



Justice White

cc: The Conference

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 MAY 30 P1:53

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

From: Justice Rehnquist

Circulated: MAY 30 1984

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1330

MORRIS THIGPEN, COMMISSIONER, MISSISSIPPI  
DEPARTMENT OF CORRECTIONS, ET AL.,  
PETITIONER *v.* BARRY JOE ROBERTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[May —, 1984]

JUSTICE REHNQUIST, dissenting.

The Court granted certiorari in this case to review a single question presented by the petition for certiorari: whether the Court of Appeals properly applied our decision in *Illinois v. Vitale*, 447 U. S. 410 (1980), in sustaining respondent's claim of double jeopardy under the Fifth and Fourteenth Amendments to the United States Constitution. The Court of Appeals held that the Clause was a bar to further prosecution on a charge of manslaughter stemming from the death of a ten year-old child who had been a passenger in the truck involved in a collision with respondent's car. This Court, however, in an unexampled bit of procedural footwork which surely has adverse implications for the "rule of four" principle governing our grants of certiorari, simply refuses to even consider the double jeopardy issue raised by the State in its petition for certiorari. Without any explanation whatever, the Court affirms the judgment of the Court of Appeals on an alternative ground.

The only precedent cited for this unexplained—and I dare say unexplainable—decision is *United States v. New York Telephone Co.*, 434 U. S. 159 (1977). But that case stands only for the unexceptionable proposition that a respondent may argue to this Court any basis supported by the record for affirming the judgment of the lower court, even though

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

4

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 15, 1984

Re: 82-1330 - Thigpen v. Roberts

Dear Byron:

Please join me.

Respectfully,



Justice White

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57 MAY 12 11:31

2000

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 15, 1984

No. 82-1330 Thigpen v. Roberts

Dear Byron,

For the present I will wait for additional writing in this case.

Sincerely,



Justice White

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22 09 12 83

102  
2052

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To: The Chief Justice  
Justice Brennan  
Justice White  
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Justice Powell  
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Justice Stevens

From: Justice O'Connor

Circulated: June 1 '84

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1330

MORRIS THIGPEN, COMMISSIONER, MISSISSIPPI  
DEPARTMENT OF CORRECTIONS, ET AL.,  
PETITIONER *v.* BARRY JOE ROBERTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR, dissenting.

For the reasons stated in JUSTICE REHNQUIST's dissent, I believe the Court should address the double jeopardy question decided by the Court of Appeals. I also agree with JUSTICE REHNQUIST that the Court of Appeals' ruling should be vacated, and the case remanded for further consideration in light of *Blackledge v. Perry*, 417 U. S. 21 (1974). In my view, however, the Court of Appeals' double jeopardy holding should be vacated simply on the ground that jeopardy does not attach in the first tier of a "two-tier" criminal trial.

Two-tier systems for adjudicating less serious criminal cases such as traffic offenses are extremely common. *Colten v. Kentucky*, 407 U. S. 104, 112 n. 4 (1972). Indeed, this is our second occasion this Term to review double jeopardy problems arising out of a two-tier trial. See *Justices of Boston Municipal Court v. Lydon*, No. 82-1479, — U. S. — (1984). Mississippi's two-tier system is fairly typical. A defendant convicted in a Mississippi justice of the peace court has an absolute right to a trial de novo if he chooses to appeal his conviction. See *Calhoun v. City of Meridian*, 355 F. 2d 209, 211 (CA5 1966); Miss. Code Ann. §§ 99-35-1 *et seq.* (1972). In Mississippi, as in Kentucky, "a defendant can bypass the inferior court simply by pleading guilty and erasing immediately thereafter any consequence that would otherwise follow

P 1, 2

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JUSTICE MARSHALL

84 JUN 11 A9:39

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

From: Justice O'Connor

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1330

MORRIS THIGPEN, COMMISSIONER, MISSISSIPPI  
DEPARTMENT OF CORRECTIONS, ET AL.,  
PETITIONER *v.* BARRY JOE ROBERTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE POWELL joins,  
dissenting.

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Stylistic Changes Throughout

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JUSTICE MARSHALL

84 JUN 18 P2:51

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

From: Justice O'Connor

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3d  
2nd DRAFT

June 18 '84

SUPREME COURT OF THE UNITED STATES

No. 82-1330

MORRIS THIGPEN, COMMISSIONER, MISSISSIPPI  
DEPARTMENT OF CORRECTIONS, ET AL.,  
PETITIONER v. BARRY JOE ROBERTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1984]

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