

The Burger Court Opinion Writing Database

Tennessee v. Street

471 U.S. 409 (1985)

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



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

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

TENNESSEE *v.* HARVEY J. STREET

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF TENNESSEE, EASTERN DISTRICT

No. 83-2143. Decided October —, 1984

CHIEF JUSTICE BURGER, dissenting from the denial of certiorari.

Ben Tester was last seen alive on August 26, 1981, as he walked toward his home in Hampton, Tennessee. The next day Tester was found dead—his body hanging by a nylon rope from an apple tree in his back yard. Tester's house had been ransacked, and the evidence indicated that Tester had struggled with an assailant or assailants.

After an investigation, respondent Harvey Street, a neighbor of Tester, was arrested and charged with the murder. At Street's trial, which was severed from the trials of others charged in connection with the crime, the State relied on a detailed, voluntary statement that Street made during an interview with sheriff Papantoniou on September 17, 1981. According to Street's confession, he and Clifford Peele selected Ben Tester's house to burglarize because they believed that Tester would be away at church. While Street, Peele and two other young men were in the house, however, Tester returned home and surprised the intruders. Peele threw Tester to the floor, took his wallet, and declared that they were going to "string him up." Working toward that end, Street tore a sheet to make a gag for Tester's mouth. Street then watched as the others carried Tester out of the house, stood him in the back of a pickup truck, tied a rope to a tree, placed the rope around his neck, and pushed him off the tailgate.

Street took the stand and testified that he did not burglarize Tester's house, nor participate in the murder. He further maintained that his September 17 confession was co-

NO

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

From: **The Chief Justice**

APR 30 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2143

TENNESSEE, PETITIONER v. HARVEY J. STREET

**ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF TENNESSEE, EASTERN DISTRICT**

[May —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether respondent's rights under the Confrontation Clause were violated by the introduction of the confession of an accomplice for the nonhearsay purpose of rebutting respondent's testimony that his own confession was coercively derived from the accomplice's statement.

I

Ben Tester was last seen alive on August 26, 1981, as he walked toward his home in Hampton, Tennessee. The next day Tester's body was found hanging by a nylon rope from an apple tree in his yard. Tester's house had been ransacked, and it appeared that Tester had struggled with his assailants.

Respondent, a neighbor of Tester, was arrested and charged with the murder. At respondent's trial, which was severed from the trials of others charged with the crime, the State relied on a detailed confession that respondent made during an interview with sheriff Papantoniou and agents of the Tennessee Bureau of Investigation on September 17, 1981. According to respondent's confession, he and Clifford Peele decided to burglarize Ben Tester's house when Tester was away at church. While respondent, Peele and two others were in the house, however, Tester returned home and surprised the intruders. Peele threw Tester to the floor and

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Justice White
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Justice Blackmun
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Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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WJB
Please join me in your
concurring opinion

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-2143

TENNESSEE, PETITIONER *v.* HARVEY J. STREET

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF TENNESSEE, EASTERN DISTRICT

[May —, 1985]

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date
on
original
(perhaps
8th)

JUSTICE BRENNAN, concurring.

I join the opinion of the Court today admitting Peele's out-of-court confession for nonhearsay rebuttal purposes. I do so on the understanding that the trial court's limiting instruction is not itself sufficient to justify admission of the confession. See *Bruton v. United States*, 391 U. S. 123 (1968). The out-of-court confession is admissible for nonhearsay purposes in this case only because that confession was essential to the State's rebuttal of Respondent Street's defense and because no alternative short of admitting the statement would have adequately served the State's interest. See *ante*, at 6. With respect to the State's need to admit the confession for rebuttal purposes, it is important to note that Respondent created the need to admit the statement by pressing the defense that his confession was a coerced imitation of Peele's out-of-court confession.* Also, the record contains no suggestion that the State was engaged in any improper effort to place prejudicial hearsay evidence before the jury. See *Douglas v. Alabama*, 380 U. S. 415 (1965). Under the circumstances of the present case, admission of the out-of-court confession for nonhearsay rebuttal purposes raises no Confrontation Clause problems.

*In fact, at an earlier point in the trial Respondent unsuccessfully sought to introduce Peele's confession on the ground that it was "very material" to the argument that Respondent's confession was a coerced imitation. App. 41.

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(b)

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 2, 1985

83-2143 - Tennessee v. Street

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

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88 MAY -5 1985

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1985

Re: No. 83-2143-Tennessee v. Street

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 3, 1985

Re: No. 83-2143, Tennessee v. Street

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

.87 83-3 1000

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 30, 1985

83-2143 Tennessee v. Street

Dear Chief:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of the above case.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

.31 5:31 30:00

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 26, 1984

Re: No. 83-2143 Tennessee v. Street

Dear Chief,

Please join me in your dissent from denial of certiorari.

Sincerely,

WHR

The Chief Justice

cc: The Conference

83-2143-18
OCT 28 1984
CHAMBERS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 1, 1985

Re: No. 83-2143 Tennessee v. Street

Dear Chief,

Please join me.

Sincerely,
WR

The Chief Justice

cc: The Conference

84 102-1 61:23

W

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 30, 1985

Re: 83-2143 - Tennessee v. Street

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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at 5:30 5/1/85

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 30, 1985

Re: 83-2143 Tennessee v. Harvey J. Street

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

APR 30 1985