

# The Burger Court Opinion Writing Database

## *Ball v. United States*

470 U.S. 856 (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**

Circulated: **MAR 8 1985**

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-5004

**TRUMAN LEWIS BALL, PETITIONER v.  
UNITED STATES**

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

[March —, 1985]

**CHIEF JUSTICE BURGER** delivered the opinion of the Court.

We granted certiorari to decide whether a felon who obtains a firearm may be convicted and concurrently sentenced under 18 U. S. C. § 922(h)(1), for receiving that firearm, and under 18 U. S. C. App. § 1202(a)(1), for possessing the same weapon. — U. S. — (1984).

**I**

After driving around Honaker, Virginia, with several acquaintances, including petitioner Truman Ball, Hubert Romans discovered that his .32 caliber nickel-plated Rossi revolver was missing from the back seat of his car.<sup>1</sup> He reported the incident to the Russell County Sheriff's Department. Subsequently, a neighbor notified the Sheriff that Ball had threatened him with a pistol matching the description of Romans' revolver. Later that same day, the police located Ball at another neighbor's home where Ball had tried unsuccessfully to sell the revolver. When the police told Ball he was under arrest, Ball fled but was promptly apprehended with Romans' revolver in his possession.

<sup>1</sup> In October 1981, Elliot Brothers of South Carolina had shipped the revolver to McGlothlin's Store in Honaker, Virginia. On February 22, 1982, McGlothlin sold the gun to Romans.

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

(CHANGES: 3, 5, 9, 10)

From: **The Chief Justice**

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

Recirculated: **MAR 11 1985**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

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*Join?*

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

From: **The Chief Justice**

Circulated: \_\_\_\_\_  
Recirculated: **MAR 15 1985**

CHANGES: 1

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-5004

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*Conrad*  
*Justice*

*Mc*

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 15, 1985

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

ES:RA 01:00 18\*

'84 MAR 15 P2:36

Re: No. 84-5004 - Ball v. United States

Dear Chief:

I am still up in the air about your opinion in this case. I think I can best sum up my problem by pointing out 2 sentences in this opinion. On page 3, the first sentence of the second paragraph, "It is clear that a convicted felon may be prosecuted simultaneously for violations of §§ 922(h) and 1202(a) involving the same firearm." and you compare that with the last sentence of the first full paragraph on page 6, which is quoted here, "In other words, Congress seems clearly to have recognized that a felon who receives a firearm must also possess it, and thus had no intention of subjecting that person to two convictions for the same criminal act."

I hope you can recognize my problem.

While I am in general agreement with the whole opinion there are apparent conflicts such as the two I mention that make me hesitate. Please help me out.

Sincerely,

*J.M.*  
T.M.

*Dear Thurgood*  
*pg 3 is prosecution*  
*pg 6 is convictions*  
*no conflict*  
*at all!!*  
*WAB*

The Chief Justice

cc: The Conference

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STYLISTIC CHANGES THROUGHOUT

p 10

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

From: The Chief Justice

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

Recirculated: MAR 19 1985

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-5004

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UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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[March —, 1985]

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CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

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

March 11, 1985

No. 84-5004

Ball v. United States

Dear Chief,

I agree.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 11, 1985

84-5004 - Ball v. United States

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Dear Chief,

Please join me.

Sincerely yours,

The Chief Justice

Copies to the Conference

94 5004 0321

31  
20

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 15, 1985

Re: No. 84-5004 - Ball v. United States

Dear Chief:

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I hope you can recognize my problem.

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Sincerely,

*J.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 18, 1985

Re: No. 84-5004-Ball v. United States

Dear Chief:

Please add at the bottom of your opinion:  
"Justice Marshall concurs in the judgment."

Sincerely,

*J.M.*

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 14, 1985

Re: No. 84-5004, Ball v. United States

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

84 MAR 12 10 13

7111  
201

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 8, 1985

84-5004 Ball v. United States

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 this case.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

84-5004-3

201

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 14, 1985

Re: 84-5004 - Ball v. United States

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

.91 26 14 1985

012  
205

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

From: **Justice Stevens**

Circulated: MAR 19 1985

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-5004

**TRUMAN LEWIS BALL, PETITIONER v.  
UNITED STATES**

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

[March —, 1985]

JUSTICE STEVENS, concurring in the judgment.

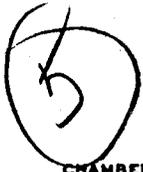
The Court correctly holds that petitioner's conduct may support a conviction under either § 922(h)(1) or § 1202(a)(1), but not both. In reaching that conclusion the Court unnecessarily volunteers the opinion that "there is no bar to the Government's proceeding with prosecution simultaneously under the two statutes." *Ante*, at 5; see also *id.*, at 3. Even if that opinion were well founded, I see no reason why this Court should go out of its way to encourage prosecutors to tilt the scales of justice against the defendant by employing such tactics.

The views that JUSTICE MARSHALL expressed in his dissent in *Missouri v. Hunter*, 459 U. S. 359, 371-372 (1983), succinctly explain why I concur in the Court's judgment today:

"... the entry of two convictions and the imposition of two sentences cannot be justified on the ground that the legislature could have simply created one crime but prescribed harsher punishment for that crime. This argument incorrectly assumes that the total sentence imposed is all that matters, and that the number of convictions that can be obtained is of no relevance to the concerns underlying the Double Jeopardy Clause.

"When multiple charges are brought, the defendant is 'put in jeopardy' as to each charge. To retain his free-

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CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

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

March 14, 1985

No. 84-5004 Ball v. United States

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference

.84 MAR 12 10 13