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Susi Vs. Flowers

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Court : US Supreme Court

Decided On : 1975

Appeal No. : 423 U.S. 1006

Appellant : Susi

Respondent : Flowers

Judgement :

SUSI v. FLOWERS - 423 U.S. 1006 (1975)
U.S. Supreme Court SUSI v. FLOWERS , 423 U.S. 1006 (1975)

423 U.S. 1006

Rosenell SUSI and Mae Diana
v.
Jay FLOWERS, Judge.
No. 75-495.

Supreme Court of the United States

December 1, 1975

On petition for writ of certiorari to the Supreme Court of Ohio.

The petition for a writ of certiorari is denied.

Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL concurs, dissenting.

Petitioners were arrested on August 31, 1971, and charged with permitting a room to be used for gambling, a misdemeanor, Ohio Rev.Code Ann. 2915.01 (Anderson 1975), and with possession of numbers game tickets, a felony, Ohio Rev.Code Ann. 2915.111 (Anderson 1975). On March 6, 1972, petitioners were tried and convicted of the first charge in the Municipal Court of Franklin County, Ohio. They were subsequently indicted on the felony charge in the Court of Common Pleas of Franklin County, and they filed a motion to

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dismiss the indictment as violative of double jeopardy based on the previous conviction for a misdemeanor arising out of the same criminal episode. The trial court overruled the motion to dismiss, and the Court of Appeals dismissed petitioners' complaint seeking habeas corpus. In re Susi, 38 Ohio App.2d 73, 313 N.E.2d 422 (1973). The same court then dismissed petitioners' claim for a writ of prohibition, and this dismissal was affirmed on appeal by the Ohio Supreme Court. Ohio ex rel. Susi v. Flowers, 43 Ohio St.2d 11, 330 N.E.2d 662 (1975).

Thus, the State seeks to try petitioners on two charges in separate trials, although the charges clearly arose out of the same criminal transaction or episode. In that circumstance, we should grant the petition for certiorari and reverse the denial of petitioners' complaint seeking a writ of prohibition. I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, Benton v. Maryland, 395 U.S. 784 (1969), requires the joinder at one trial, except in extremely limited circumstances not present here, of 'all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction.' Ashe v. Swenson, 397 U.S. 436 , 453-454, 25 L. Ed.2d 469 (1970) (Brennan, J., concurring). See Vardas v. Texas, 423 U.S. 904 (1975) (Brennan, J., dissenting); Stewart v. Iowa, 423 U.S. 902 (1975) (Brennan, J., dissenting); Waugh v. Gray, 422 U.S. 1027 (1975) (Brennan, J., dissenting); Wells v. Missouri, 419 U.S. 1075 (1974) (Brennan, J., dissenting); Morton v. Swenson, 417 U.S. 957 (1974) (Brennan, J., dissenting); Tijerina v.

New Mexico, 417 U.S. 956 (1974) (Brennan, J., dissenting); Ciuzio v. United States, 416 U.S. 995 (1974) (Brennan, J., dissenting); Harris v. Washington, 404 U.S. 55, 57 d 212 (1971) (concurring opinion);

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Waller v. Florida, 397 U.S. 387, 395 (1970) (Brennan, J., concurring). See also People v. White, 390 Mich. 245, 212 N.W. 2d 222 (1973); State v. Brown, 262 Or. 442, 497 P.2d 1191 (1972); Commonwealth v. Campana, 452 Pa. 233, 304 A.2d 432 (1973), vacated and remanded, 414 U.S. 808 (1973), aff'd, 455 Pa. 622, 314 A.2d 854 (1974); State v. Gregory, 66 N.J. 510, 333 A.2d 257 (1975).

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