

*DUNCAN v. LOUISIANA***Appellant's Argument**

INTRODUCTION OF COUNSEL:

It arrived in the Supreme Court after an appeal from the Louisiana Supreme Court. The Louisiana Supreme Court denied review with a writ of certiorari. The case went to the Louisiana Supreme Court following a conviction of appellant Duncan in the Louisiana trial court.

Appellant Duncan was convicted of simple battery, a simple misdemeanor under Louisiana law. The maximum penalty was two years and a \$300 fine. Mr. Duncan wanted a jury trial but the Louisiana Constitution only gave defendants such a right in cases where there was capital punishment or hard labor. The trial judge denied Mr. Duncan's request for a jury trial.

Appellant was convicted, got 60 days and a fine of \$10. On his appeal in the Louisiana courts, he argued that there were violations of the 6th and 14th Amendment rights under the Constitution. We are now in the U.S. Supreme Court following the denial of his request.

Essentially, the facts of the case were that Duncan, age 19 at the time of the trial, was driving when he saw two young cousins talking with four white boys. Duncan, a black man, knew of racial tensions at his cousins' school. He pulled his car over and approached the six young people. According to the white boys' testimony at trial, Duncan slapped one of them on the elbow as he was getting in his car. The blacks who took the stand refuted that Duncan had slapped him, but instead testified that Duncan had merely touched him. Without a jury, the judge convicted Duncan of battery.

So the issue before this court today is whether my client was unfairly denied his right to a

jury trial. I suggest that there are several reasons why his conviction must be overturned. First, and foremost, is the language of the Constitution itself. The language in the 14th Amendment requires Louisiana and all states to provide due process of law to any citizen when they deprive a citizen of his or her liberty. Surely, we have due process violations when a citizen like this young man can be locked up for two years without the ability to have a jury of his peers determine his guilt or innocence. Nothing is more basic to our system of justice than a right to a trial by jury. That right is also guaranteed in all federal criminal cases by the 6th Amendment and has been for over 50 years.

Now, my opponent may argue that the right to a jury trial for serious cases has never been explicitly guaranteed by either the 6th or the 14th Amendments in state court cases. But this court has repeatedly emphasized that the due process principle applies to any state action that effects a fundamental right such as a fair trial. This court has used the same reasoning to apply the right to an attorney in state court criminal proceedings. It has used the same reasoning when state officers illegally seize evidence which must be excluded in a state court criminal trial.

If it were nothing more than the language of our Constitution itself which screams out to reverse my client's conviction, that should be enough, but there is more. The second compelling reason is the long tradition we have of jury trials in our system of criminal justice. We know the juries serve as safeguards between an accused and an overzealous government. Juries insulate a defendant like Mr. Duncan from prejudicial, eccentric judges. As a nation, we have always seen the danger of placing too much power in the hands of one man, whether it is a president or a judge. Our government is a system of checks and balances. There is no better way of preventing oppression by government than by saying very simply - okay, Mr. Prosecutor, if you want to imprison this man, you must convince a group of citizens from his community of the rightness of your cause.

Now the State of Louisiana will argue that permitting jury trials for all serious offenses will open the flood gates to clog our court system. It will cost taxpayers untold millions. And it will interfere with the State's administration of its own criminal justice system. I recognize that 90% of all criminal cases are prosecuted in state court rather than federal court, and states must be given some flexibility in the operation of their systems. But the simple fact is that Louisiana has chosen to subject my client to a possible two year term of imprisonment for, at worst, a slapping of the elbow. The fact that he only got 60 days is of no moment. Facing two years, he should have been given the right to a jury trial. That is all the court need decide today.

For all these reasons, we request a reversal.

Appellee's Argument

INTRODUCTION OF COUNSEL:

We urge this court to affirm the judgment of the Louisiana Supreme Court. Several reasons support our position. Before I begin, however, let me make a brief comment on the facts of the case. As we all know, this court is not here to retry the facts of Mr. Duncan's case. There is nothing in the record that suggests the defendant was tried differently because he was black or that the state court judge discriminated against him due to his race. There are ample facts in the record to support the judge's conclusion that the battery offense was, indeed, committed. Mr. Duncan's counsel, on the other hand, appears to be using the race card to divert the court's attention away from the real issue in the case, and that is whether Louisiana or any other state is forbidden by the Constitution from trying a simple battery case to a judge alone rather than to a jury. Simple answer to that question is clearly "No". Nothing in the Constitution or in our nation's history forbids such a procedure.

As Your Honors know, states have primary responsibility for operating our criminal justice system. Each state is required to follow the standards of the 14th Amendment by providing due process before depriving one of its citizens of liberty. But due process has never been interpreted to mean that a defendant in a simple battery case has a right to a jury trial. Each state must be given flexibility to devise procedures that are most suitable to its own citizens. Just because the federal government does things a certain way doesn't mean that due process requires all states to follow suit. And just because the 6th Amendment allows federal defendants to choose a jury trial doesn't mean that that particular right must be incorporated into all 50 states' criminal justice systems. This type of argument flies in the face of dozens of this court's earlier decisions. Very simply, the Bill of Rights, including the 6th Amendment right to a jury trial in federal court, were never designed to operate against the states.

I would also be remiss if I did not point out to the court that in the case of *Maxwell v. Dow*, you announced, and I quote: "trial by jury has never been affirmed to be a necessary requisite of due process of law". In that same opinion, this court also went on to say, "the state has full control of the procedure in its courts, both in civil and criminal cases".

To follow my adversary's suggestions, this court would have to overturn many of its earlier decisions. Reversing history and precedent has the effect of creating unpredictability, uncertainty and lack of respect for this court's interpretation of due process.

We are not suggesting that due process should not be provided Mr. Duncan. We are suggesting, however, that due process only requires that his trial be fundamentally fair. Here, he had a lawyer, a right to cross examine witnesses and call witnesses on his behalf, he had the right to appeal. The fact that he didn't have a jury doesn't make his trial fundamentally unfair.

We should be mindful that trial by jury is not the only way of determining guilt or innocence. In fact, many experts criticize juries for being emotional, uneducated, undisciplined, deciding cases not on evidence but on outside influences. We have all heard of runaway juries who award huge sums of money for minor injuries. Trial by jury should not be considered superior to a bench trial.

Furthermore, most defendants chose to have their cases heard by a judge rather than a jury even when a jury is available. In some states, court trials outnumber jury trials by nine to one. Are we to assume, as the Appellant might argue, that all of these cases involve violations of due process?

Finally, even if you were to announce that some types of cases merit the right to a jury trial, this simple battery prosecution certainly does not rise to the level of such a serious offense. Bluntly speaking, it is a lesser crime that does not merit the expense of a jury trial. Where shall we draw the line? At traffic offenses? I suggest we draw the line here. A defendant such as Mr. Duncan, charged with a simple battery case, even where the possible penalty is two years, should not be given the option of summoning 12 people from his community to hear his case. A judge, either elected by the people or appointed by the state, is quite capable of finding guilt or innocence impartially and fairly.

For all the above reasons, we respectfully request that the judgment below be affirmed.
