The Burger Court Opinion Writing Database

Palmer v. City of Euclid

402 U.S. 544 (1971)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1971

No. 143 - Palmer v. Euclid

Dear Byron:

Please join me.

Regards,

WEB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 8, 1971

Dear Byron,

Re: No. 143 - Palmer v. City of Euclid, O.

I acquiesce.

Sincerely,

H. L. B.

Mr. Justice White

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

April 8, 1971

#143 - City of Euclid

Further study of this case has led me to the conclusion that it is more difficult than I had first thought and I am not yet satisfied that it can be disposed of on the basis set forth in your proposed per curiam. As presently advised, I think I shall write separately, even though I tend to think that the result you reached is right. However, I want to put my thoughts on paper before finally coming to rest. This will take me a little time, because of other priorities.

Sincerely,

JMH

Mr. Justice White

cc: Conference

May 13, 1971

Re: No. 143 - Palmer v. Euclid

Dear Byron:

After spending more time on this case than I should have, I have decided not to write and am content to go along with your result. So will you please add at the foot of your opinion:

"MR. JUSTICE HARLAN concurs in the result."

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 7, 1971

RE: No. 143 - Palmer v. City of Euclid, Ohio

Dear Byron:

I agree with the Per Curiam you have prepared in the above.

Sincerely,

W.J.B. Jr.

Mr. Justice White

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Stewart, J.

Circulated: APR 8 1971

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 143.—October Term, 1970

James Palmer, Appellant, v. City of Euclid, Ohio. } On Appeal From the Supreme Court of Ohio.

[April —, 1971]

Mr. Justice Stewart, concurring.

While I agree with the Court that Euclid's "suspicious person ordinance" is unconstitutional as applied to the appellant, I would go further and hold that the ordinance on its face is unconstitutionally vague.

A policeman has a duty to investigate suspicious circumstances, and the circumstance of a person wandering the streets late at night without apparent lawful business may often present the occasion for police inquiry. But in my view government does not have constitutional power to make that circumstance, without more, a criminal offense.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 143.—October Term, 1970

Recirculated: APR 9 197

James Palmer, Appellant,
v.
City of Euclid, Ohio.
} On Appeal From the Supreme Court of Ohio.

[April —, 1971]

Mr. Justice Stewart, with whom Mr. Justice Douglas joins, concurring.

While I agree with the Court that Euclid's "suspicious person ordinance" is unconstitutional as applied to the appellant, I would go further and hold that the ordinance is unconstitutionally vague on its face.

A policeman has a duty to investigate suspicious circumstances, and the circumstance of a person wandering the streets late at night without apparent lawful business may often present the occasion for police inquiry. But in my view government does not have constitutional power to make that circumstance, without more, a criminal offense.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1971

Re: No. 143 - Palmer v. City of Euclid, Ohio

Dear Chief:

You have indicated interest in my remarks about this case in Conference the other day. Those remarks you thought expressed considerable doubt about the vote to reverse which I joined.

I did vote to invalidate the statute but was doubtful about doing so on the ground that a city may not constitutionally enforce a curfew ordinance which, with some exceptions, keeps everyone off the streets after a certain hour. It is not necessary, however, to reach the latter question in disposing of this case. The ordinance is not vague on its face but it is vague as applied.

Although the trial judge did not construe the ordinance but instructed the jury in the language of the ordinance, and although the appellate courts acted without opinion, it would seem that conviction under the ordinance requires proof of the following elements:

(1) "wandering" about the streets or being abroad on the streets at late or unusual hours;

(2) being at the time "without visible or lawful business"; and

(3) failing to give a satisfactory explanation for presence on the streets.

If a defendant is found on the streets at 2:30 a.m. and refuses to give any explanation of his activities, that defendant could hardly plead lack of notice that his conduct provided elements (1) and (3) of the crime as defined by the

ordinance. And if at the time he was observed pandering for a prostitute, wandering in the streets obstructing traffic or peering into windows of private residences, he should have known that he was on the streets for an unlawful purpose. Hence, since there are many situations in which a responsible person should know are reached by the ordinance, the claim of facial vagueness fails. Cf. No. 117, Coates v. City of Cincinnati.

But, as applied, the result is different. Palmer, in his car, was seen late at night in a parking lot. A female left his car and entered by the front door an adjoining apartment house. Palmer then pulled onto the street, parked with his lights on and used a two-way radio. He had no gun. He said he had just let off a friend. He was then arrested. At the station he gave three different addresses for himself and said he did not know his friend's name or where she was going when she left his car. Palmer could reasonably be charged with knowing that he was on the streets at a late or unusual hour and that denying knowledge of his friend's identity and claiming multiple addresses amounted to an unsatisfactory explanation under the ordinance. But it appears quite irrational to suppose that any reasonable person would realize that by discharging a friend at an apartment house and then talking on a car telephone while parked on the street was enough to show him to be "without visible or lawful business."

First, to escape its reach the ordinance requires a business purpose to be on the streets. But it seems irrational to construe the ordinance as permitting only visible and lawful commercial activities on the streets, thus in effect converting the ordinance into a curfew with exceptions for lawful commercial conduct. Neither the courts below nor the State suggests the ordinance should be construed in this manner or that anyone would expect that it would be so construed.

This leaves the question of whether the ordinance notified petitioner that the visibility and lawfulness of his conduct were subject to question under the ordinance. Should anyone really anticipate that he would be charged with a crime by letting off a female friend in a parking lot adjoining an apartment house and then pulling onto and parking on the street? I doubt it very much. Insofar as this record reveals, everything petitioner did was quite

visible and there is no suggestion whatsoever that what he did was unlawful under the local, state or federal law. If his conduct satisfied the being-without-visible-or-lawful-business element of the statute, as the state courts must have held, then it seems quite unreasonable to charge him with notice that such would be the construction of the statute.

It may be that what he did, combined with what he said, made him suspicious, but it did not make him a suspicious person within the meaning of the statute absent proof of all the elements of the crime. Thus alternatively, and perhaps preferably, it could be said that there was complete absence of proof that anything he did satisfied the requirement that he was without visible or lawful business when he was arrested.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

P.S. On this record it does not appear that constitutional issues were presented in the trial court until the motion for a new trial was filed. I suppose it can be safely assumed that Palmer preserved and urged his new-trial grounds in the intermediate appellate court. The Supreme Court of Ohio dismissed on the ground that no substantial constitutional question was presented. The State in this Court makes no suggestion that federal issues were not raised, preserved and ruled on in state courts.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

From: White, J.

1st DRAFT

Circulated: 4-6-71

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SUPREME COURT OF THE UNITED STATES

No. 143.—October Term, 1970

James Palmer, Appellant, v. City of Euclid, Ohio. } On Appeal From the Supreme Court of Ohio.

[April —, 1971]

Per Curiam.

Appellant Palmer was convicted by a jury of violating the City of Euclid's "suspicious person ordinance," that is, of being

> "Any person who wanders about the streets or other public ways or who is found abroad at late or unusual hours in the night without any visible or lawful business and who does not give satisfactory account of himself."

He was fined $50 and sentenced to 30 days in jail. The County Court of Appeals affirmed the judgment and appeal to the Supreme Court of Ohio was dismissed "for the reason that no substantial constitutional question exists herein." We noted probable jurisdiction. 397 U. S. 1073 (1970).

We reverse the judgment against Palmer because the ordinance is so vague and lacking in ascertainable standards of guilt that, as applied to Palmer, it failed to give "a person of ordinary intelligence fair notice that his contemplated conduct is forbidden . . . ." *United States* v. *Harriss*, 347 U. S. 612, 617 (1954).

The elements of the crime defined by the ordinance apparently are (1) wandering about the streets or being abroad at late or unusual hours; (2) being at the time

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 7, 1971

Re: No. 143 - Palmer v. Euclid

Dear Byron:

Please join me.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

April 9, 1971

Re: No. 143 - Palmer v. City of Euclid

Dear Byron:

Subject to what Justice Harlan may have to say, as indicated in his note of April 8, please join me.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference