

The Burger Court Opinion Writing Database

Jones v. Hildebrandt

432 U.S. 183 (1977)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

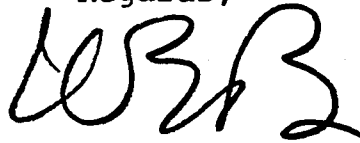
June 13, 1977

Re: 76-5416 - Ruby Jones v. Douglas Hildebrant

Dear Bill:

I join.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 8, 1977

RE: No. 76-5416 Jones v. Hildebrant

Dear Byron:

Please join me in the dissenting opinion you have
prepared in the above.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 24, 1977

76-5416, Jones v. Hildebrant

Dear Bill,

I agree with the Per Curiam you
have circulated in this case.

Sincerely yours,

PS

Mr. Justice Rehnquist

Copies to the Conference

BRW
 [Handwritten initials and marks]

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-7-77

Recirculated: _____

No. 76-5416 - Jones v. Hildebrant

MR. JUSTICE WHITE, dissenting.

Physical abuses by police under color of state law may in some circumstances constitute a constitutional deprivation giving rise to criminal liability under the civil rights laws, even if the abuses result in the death of the victim, Screws v. United States, 325 U.S. 91 (1945); and if the victim survives such abuses, it is now clear that he may recover damages under 42 U.S.C. § 1983 for the injuries that he has sustained. See Monroe v. Pape, 365 U.S. 167 (1961); Johnson v. Glick, 481 F. 2d 1028 (CA 2), cert. denied, 414 U.S. 1033 (1973); Howell v. Cataldi, 464 F. 2d 272 (CA 3 1972); Tolbert v. Bragan, 451 F. 2d 1020 (CA 5 1971); Jenkins v. Averett, 424 F. 2d 822 (CA 9 1969). There remain the question whether, independently or in conjunction with state law, § 1983 affords parents a cause of action for a wrongful killing of their child by a state law enforcement officer and, if it does, the further question as to the measure of damages in such case.

This Court has never addressed these issues.^{1/} Beginning with Brazier v. Cherry, 293 F. 2d 401 (CA 5), cert.

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

1st PRINTED DRAFT

Recirculated: 6-13-77

SUPREME COURT OF THE UNITED STATES

No. 76-5416

Ruby Jones, Petitioner,
 v.
 Douglas Hildebrand et al. } On Writ of Certiorari to the
 Supreme Court of Colorado.

[June —, 1977]

MR. JUSTICE WHITE, dissenting. *Also to J.B. + JM*

Physical abuses by police under color of state law may in some circumstances constitute a constitutional deprivation giving rise to criminal liability under the civil rights laws, even if the abuses result in the death of the victim, *Screws v. United States*, 325 U. S. 91 (1945); and if the victim survives such abuses, it is now clear that he may recover damages under 42 U. S. C. § 1983 for the injuries that he has sustained. See *Monroe v. Pape*, 365 U. S. 167 (1961); *Johnson v. Glick*, 481 F. 2d 1028 (CA2), cert. denied, 414 U. S. 1033 (1973); *Howell v. Cataldi*, 464 F. 2d 272 (CA3 1972); *Tolbert v. Bragan*, 451 F. 2d 1020 (CA5 1971); *Jenkins v. Averett*, 424 F. 2d 822 (CA9 1969). There remain the question whether, independently or in conjunction with state law, § 1983 affords parents a cause of action for a wrongful killing of their child by a state law enforcement officer and, if it does, the further question as to the measure of damages in such case.

This Court has never addressed these issues.¹ Beginning with *Brazier v. Cherry*, 293 F. 2d 401 (CA5), cert. denied, 368

¹ At least one case in this Court has involved such an action. In *Scheuer v. Rhodes*, 416 U. S. 232 (1974), survivors of students killed in the 1970 slayings at Kent State University brought a § 1983 action alleging the wrongful killing of the victims. The Court held that state officials were not absolutely immune from such suits. Although the question whether the survivors' action could be maintained under § 1983 was not before the Court, it did not disapprove of such actions in remanding the case to the lower courts.

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice White

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Circulated: 6-15-77

No. 76-5416

Ruby Jones, Petitioner, }
 v. } On Writ of Certiorari to the
 Douglas Hildebrant et al. } Supreme Court of Colorado.

[June —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

Physical abuses by police under color of state law may in some circumstances constitute a constitutional deprivation giving rise to criminal liability under the civil rights laws, even if the abuses result in the death of the victim, *Screws v. United States*, 325 U. S. 91 (1945); and if the victim survives such abuses, it is now clear that he may recover damages under 42 U. S. C. § 1983 for the injuries that he has sustained. See *Monroe v. Pape*, 365 U. S. 167 (1961); *Johnson v. Glick*, 481 F. 2d 1028 (CA2), cert. denied *sub nom. John v. Johnson*, 414 U. S. 1033 (1973); *Howell v. Cataldi*, 464 F. 2d 272 (CA3 1972); *Tolbert v. Bragan*, 451 F. 2d 1020 (CA5 1971); *Jenkins v. Averett*, 424 F. 2d 1228 (CA4 1970); *Collum v. Butler*, 421 F. 2d 1257 (CA7 1970); *Allison v. California Adult Authority*, 419 F. 2d 822 (CA9 1969). There remain the question whether, independently or in conjunction with state law, § 1983 affords parents a cause of action for a wrongful killing of their child by a state law enforcement officer and, if it does, the further question as to the measure of damages in such case.

This Court has never addressed these issues.¹ Beginning

¹ At least one case in this Court has involved such an action. In *Scheuer v. Rhodes*, 416 U. S. 232 (1974), survivors of students killed in the 1970 slayings at Kent State University brought a § 1983 action alleging the wrongful killing of the victims. The Court held that state offi-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1977

Re: No. 76-5416 - Jones v. Hildebrant

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 23, 1977

Re: No. 76-5416 - Jones v. Hildebrandt

Dear Bill:

I agree with your proposed per curiam.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

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

May 23, 1977

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

No. 76-5416 Jones v. Hildebrant

Dear Bill:

I agree with your Per Curiam in the above case.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: MAY 20 1977

Re-circulated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5416

Ruby Jones, Petitioner,
 v.
 Douglas Hildebrant et al. } On Writ of Certiorari to the
 Supreme Court of Colorado.

[May —, 1977]

PER CURIAM.

Petitioner is the mother of a 15-year-old son who was shot at and killed by respondent Hildebrant, while respondent was acting in his capacity as a Denver police officer. Petitioner brought suit in her own behalf in state court. Respondent defended on the ground that he shot petitioner as a fleeing felon using no more force than was reasonably necessary. The amended complaint asserted three claims for relief: battery; negligence; and intentional deprivation of federal constitutional rights. Although not specifically pleaded, the first two claims were admittedly based on the Colorado wrongful death statute, § 13-21-202, Colo. Rev. Stat. 1973,¹ and the third, on 42 U. S. C. § 1983 (1970). While petitioner alleged damages of \$1,500,000, she stipulated to a reduction of her prayer for relief with respect to the first two claims, since the Colorado wrongful death statute admittedly limited her maximum

¹ Section 13-21-202, Colo. Rev. Stat. 1973, provides

"When the death of a person is caused by a wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable, if death had not ensued, shall be liable in an action for damages notwithstanding the death of the party injured."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 20, 1977

Re: 76-5416 - Jones v. Hildebrant

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference