

The Burger Court Opinion Writing Database

Hopper v. Evans

456 U.S. 605 (1982)

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



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 SUPREME COURT, U.S.
 JUSTICE MARSHALL

'82 MAY -7 A10:22

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

From: **The Chief Justice**

Circulated: **MAY 7 1982**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1714

JOSEPH S. HOPPER, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS AND JAMES D. WHITE, WARDEN, PETITIONERS, *v.*
 JOHN LOUIS EVANS, III

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

[May —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether, after invalidation of a state law which precluded instructions on lesser included offenses in capital cases, a new trial is required in a capital case in which there was no evidence or proffer of evidence supporting a conviction of any lesser offense.

I

A

Shortly after respondent was released on parole from an Indiana prison in 1976, he and Wayne Ritter, who had been a fellow inmate, embarked on what respondent himself described as a cross-country crime "spree." Joint Appendix, at 9. According to respondent's testimony, they committed about 30 armed robberies, nine kidnappings, and two extortion schemes in seven different states during a two-month period. Respondent testified that on January 5, 1977, he and Ritter entered a pawn shop in Mobile, Alabama, intending to rob it. Ritter asked the pawn shop owner, Edward Nassar, to show him a gun. When Nassar handed the gun to Ritter, respondent pulled his own gun and announced that he in-

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

CHAMBERS OF
THE CHIEF JUSTICE

May 11, 1982

Re: No. 80-1714, Hopper v. Evans

Dear Harry and John:

I am prepared to add to the opening sentence the following:

to read as follows
", and in which the defendant pleaded guilty to the capital offense."

I am also prepared to add, as a footnote to the final paragraph, the following:

"In another case with different facts, a defendant might make a plausible claim that he would have employed different trial tactics--for example, that he would have introduced certain evidence or requested certain jury instructions--but for the preclusion clause. However, that is not this case, since the defendant here confessed that he shot the victim and then pleaded guilty to capital murder."

Regards,

Justices Blackmun and Stevens



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

CHAMBERS OF
THE CHIEF JUSTICE

May 12, 1982

Re: No. 80-1714 - Hopper et al. v. Evans

Dear John:

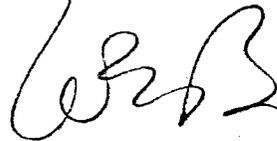
Thank you for your note of May 12.

I have no problem with your suggestion as to
✓the opening paragraph. With a small change to shorten
it, I adopt it.

It is impossible, of course, for a statement of the
question presented to tell the whole story, but my own
view, as yours is, that it should help keep the reader's
focus. It also helps keep opinions from great length!

*I attach the
system manual
to the letter.*

Regards,



Justice Stevens

cc: Justice Blackmun

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

From: **The Chief Justice**

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p. 1, 9

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1714

JOSEPH S. HOPPER, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS AND JAMES D. WHITE, WARDEN, PETITIONERS, v. JOHN LOUIS EVANS, III

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

[May —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether, after invalidation of a state law which precluded instructions on lesser included offenses in capital cases, a new trial is required in a capital case in which the defendant's own evidence negates the possibility that such an instruction might have been warranted.

I
A

Shortly after respondent was released on parole from an Indiana prison in 1976, he and Wayne Ritter, who had been a fellow inmate, embarked on what respondent himself described as a cross-country crime "spree." App. 9. According to respondent's testimony, they committed about 30 armed robberies, nine kidnappings, and two extortion schemes in seven different states during a two-month period. Respondent testified that on January 5, 1977, he and Ritter entered a pawn shop in Mobile, Alabama, intending to rob it. Ritter asked the pawn shop owner, Edward Nassar, to show him a gun. When Nassar handed the gun to Ritter, respond-

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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1982

MEMORANDUM TO THE CONFERENCE

RE: Cases held for No. 80-1714, Hopper v. Evans

No. 81-1287, Alabama v. Wright
No. 81-1397, Alabama v. Daniels
No. 81-1513, Alabama v. Bryars
No. 81-1514, Alabama v. Bracewell
No. 81-1515, Alabama v. Hill
No. 81-1600, Alabama v. Ritter
No. 81-1662, Alabama v. Davis
No. 81-1909, Alabama v. Horsley

No. 80-1600, Alabama v. Ritter

In No. 81-1600, the Alabama Supreme Court considered the appeal of Evans' co-defendant, Ritter. Ritter accompanied Evans on his cross-country crime spree and was present in the pawnshop when Evans shot and killed the shop's owner. Ritter was sentenced to death and his sentence was upheld on appeal. This Court vacated and remanded for reconsideration in light of Beck v. Alabama, 447 U.S. 625 (1980). The Alabama Supreme Court then reversed Ritter's conviction and sentence. Ritter v. State 403 So.2d 154 (1981). It issued a brief opinion citing Beck and the Fifth Circuit's opinion in Evans, which held that Beck required the reversal of every conviction in a case in which the jury was precluded from considering conviction of a lesser included offense.

In Hopper v. Evans, we held that the Fifth Circuit erred in holding that reversal is required in every case tried while the preclusion clause was in effect. Instead, reversal is required only when the defendant was prejudiced by the existence of the preclusion clause. Accordingly, this case should be vacated and remanded again so that the Alabama courts may determine whether the preclusion clause prejudiced Ritter.

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

From: **Justice Brennan**

Circulated: 5-20-82

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1714

JOSEPH S. HOPPER, COMMISSIONER, ALABAMA
 DEPARTMENT OF CORRECTIONS AND JAMES D.
 WHITE, WARDEN, PETITIONERS *v.*
 JOHN LOUIS EVANS, III

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

[May —, 1982]

JUSTICE BRENNAN and JUSTICE MARSHALL, concurring in
 part and dissenting in part.

We join the opinion of the Court to the extent that it re-
 verses the judgment of the Court of Appeals invalidating re-
 spondent's conviction. But we adhere to our view that the
 death penalty is in all circumstances cruel and unusual pun-
 ishment prohibited by the Eighth and Fourteenth Amend-
 ments. See *Gregg v. Georgia*, 428 U. S. 153, 227 (1976)
 (BRENNAN, J., dissenting); *Furman v. Georgia*, 408 U. S.
 238, 314 (1972) (MARSHALL, J., concurring). Consequently,
 we would affirm the judgment of the Court of Appeals to the
 extent that it invalidates the sentence of death imposed upon
 respondent.

.85 MAY 20 1982

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

MAY 7 - AM '82 May 7, 1982

Re: 80-171⁴ - Hooper v. Evans

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1982

Re: No. 80-1714 - Hopper v. Evans

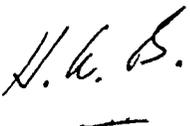
Dear Chief:

I share John's mild concern about the opening paragraph of your opinion, as expressed in his letter of May 7.

The same concern might prompt the insertion of the following after the word "trial" in the next to the last line of page 8: "-- affecting the defense strategy, selection of evidence, and request for jury instructions --".

If you could see fit to accommodate John and add these words on page 8, you have my joinder.

Sincerely,



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JUSTICE MARSHALL

'82 MAY 10 AM 1:35

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1982

Re: No. 80-1714 - Hopper v. Evans

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

87 9 7-1 88

May 7, 1982

80-1714 Hopper v. Evans

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 10, 1982

Re: No. 80-1714 Hopper v. Evans

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

.95 10 10 1982

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1982

Re: 80-1714 - Hopper v. Evans

Dear Chief:

Except for the opening paragraph, in which you state the question presented, I am prepared to join your opinion.

85-1714-10010

As you correctly point out in the final paragraph of your opinion, this record forecloses any claim that the respondent might have offered evidence of some lesser included offense if the statute had not contained the preclusion clause. Your statement of the question presented is not, however, limited to this situation. It is broad enough to decide a case in which the defendant might have made a showing in his federal habeas corpus proceeding that he had all sorts of evidence concerning a lesser included offense but decided not to offer that evidence simply because the statute made it inadmissible. Should you not, therefore, add something like the following at the end of the opening paragraph: "... and in which there is no plausible claim that evidence of a lesser included offense would have been offered if the statute did not contain a preclusion clause."

Respectfully,



The Chief Justice

Copies to the Conference

HAR

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 12, 1982

Re: 80-1714 - Hopper v. Evans

Dear Chief:

Thanks for your response to my suggestion about the opening paragraph of your circulating opinion.

I think the footnote to the final paragraph that you propose is excellent, but I have a minor difficulty with the suggestion that you add a reference to the guilty plea in the first paragraph. My concern stems from the fact that the reader at this point will be somewhat confused about the description of a procedure in which no evidence has been offered after the defendant has pleaded guilty because the reader may not be aware of the fact that Alabama requires a trial notwithstanding a guilty plea. I wonder if your purpose might be better served by revising the first paragraph to read this way:

"We granted certiorari to determine whether, after invalidation of a state law which precluded instructions on lesser included offenses in capital cases, a new trial is required in a capital case in which the evidence presented by the defendant negates the possibility that such an instruction might have been warranted."

This suggested revision would actually make the holding a little broader because it would not be

confined to guilty plea cases, but I think that is the consensus that we reached at conference.

Respectfully,

A handwritten signature in dark ink, appearing to be the initials 'JH' or similar, written in a cursive style.

The Chief Justice

cc: Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 13, 1982

Re: 80-1714 - Hopper v. Evans

Dear Chief:

Please join me.

Respectfully,



The Chief Justice
Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 7, 1982

No. 80-1714 Hopper v. Evans

Dear Chief,

Please join me.

Sincerely,



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SUPREME COURT, U.S.
JUSTICE MARSHALL

'82 MAY -7 P12:43

The Chief Justice

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