

The Burger Court Opinion Writing Database

Hayes v. Florida

470 U.S. 811 (1985)

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

March 8, 1985

Re: No. 83-6766 - Hayes v. Florida

Dear Byron,

I join.

Regards,



Justice White

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87 FEB -8 5:17

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REPRODUCED FROM THE COLLECTIONS OF THE HERSCHELL B. STARRS FOUNDATION

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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*Please join me in
your concurrence*

W

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6766

JOE HAYES, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

[March —, 1985]

JUSTICE BRENNAN, concurring in the judgment.

A young man is picked up by the police. He is taken to the police station, where he is held while his fingerprints are taken. The police have neither probable cause to arrest nor have they obtained a warrant.

These were the facts of *Davis v. Mississippi*, 394 U. S. 721 (1969). They are also the facts of the instant case. We held in *Davis* that the detention was an unreasonable seizure in violation of the Fourth Amendment. The facts of *Davis* did not raise the question whether warrantless on-site fingerprinting would constitute a reasonable search or seizure for Fourth Amendment purposes. Thus, although we noted that "the general requirement that the authorization of a judicial officer be obtained in advance of detention would seem not to admit of any exception in the fingerprinting context," we sensibly left open the question "whether the requirements of the Fourth Amendment could be met by narrowly circumscribed procedures for obtaining, during the course of a criminal investigation, the fingerprints of individuals for whom there is no probable cause to arrest." *Id.*, at 728.

The Court's opinion today recognizes that the instant case is indistinguishable from *Davis* and goes on to draw the unsurprising conclusion that the seizure here, like that in *Davis*, violated the Fourth Amendment. In reaffirming *Davis*, the Court holds that a suspect may not be appre-

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 7, 1985

No. 83-6766

Hayes v. Florida

Dear Byron:

Although I am in full accord with most of your opinion, I don't think I can agree that we should in this case reach the issue of the permissibility of on-site fingerprinting. Unless you are able to drop it, I think I will file the attached.

Sincerely,

Bill

Justice White

Copies to the Conference

Attachment

87 MB-1 b310

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: /

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

From: Justice Brennan

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6766

JOE HAYES, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

[March —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
concurring in the judgment.

A young man is picked up by the police. He is taken to the police station, where he is held while his fingerprints are taken. The police have neither probable cause to arrest nor have they obtained a warrant.

These were the facts of *Davis v. Mississippi*, 394 U. S. 721 (1969). They are also the facts of the instant case. We held in *Davis* that the detention was an unreasonable seizure in violation of the Fourth Amendment. The facts of *Davis* did not raise the question whether warrantless on-site fingerprinting would constitute a reasonable search or seizure for Fourth Amendment purposes. Thus, although we noted that "the general requirement that the authorization of a judicial officer be obtained in advance of detention would seem not to admit of any exception in the fingerprinting context," we sensibly left open the question "whether the requirements of the Fourth Amendment could be met by narrowly circumscribed procedures for obtaining, during the course of a criminal investigation, the fingerprints of individuals for whom there is no probable cause to arrest." *Id.*, at 728.

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Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6766

JOE HAYES, PETITIONER v. FLORIDA

**ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT**

[March —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The issue before us in this case is whether the Fourth Amendment to the Constitution of the United States, applicable to the States by virtue of the Fourteenth Amendment, was properly applied by the Court of Appeal of Florida, Second District, to allow police to transport a suspect to the station house for fingerprinting, without his consent and without probable cause or prior judicial authorization.

I

A series of burglary-rapes occurred in Punta Gorda, Florida, in 1980. Police found latent fingerprints on the door-knob of the bedroom of one of the victims, fingerprints they believed belonged to the assailant. The police also found a herringbone pattern tennis shoe print near the victim's front porch. Although they had little specific information to tie petitioner Hayes to the crime, after police interviewed him along with 30 to 40 other men who generally fit the description of the assailant, the investigators came to consider petitioner a principal suspect. They decided to visit petitioner's home to obtain his fingerprints or, if he was uncooperative, to arrest him. They did not seek a warrant authorizing this procedure.

Arriving at petitioner's house, the officers spoke to petitioner on his front porch. When he expressed reluctance voluntarily to accompany them to the station for fingerprint-

Join

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

From: Justice White

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6766

JOE HAYES, PETITIONER v. FLORIDA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

[March —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

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Arriving at petitioner's house, the officers spoke to petitioner on his front porch. When he expressed reluctance voluntarily to accompany them to the station for fingerprinting, one of the investigators explained that they would therefore arrest him. Petitioner, in the words of the investigator,

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

From: Justice White

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P. 7
3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-6766

JOE HAYES, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

[March —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The issue before us in this case is whether the Fourth Amendment to the Constitution of the United States, applicable to the States by virtue of the Fourteenth Amendment, was properly applied by the Court of Appeal of Florida, Second District, to allow police to transport a suspect to the station house for fingerprinting, without his consent and without probable cause or prior judicial authorization.

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Arriving at petitioner's house, the officers spoke to petitioner on his front porch. When he expressed reluctance voluntarily to accompany them to the station for fingerprinting, one of the investigators explained that they would therefore arrest him. Petitioner, in the words of the investigator,

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

@/—

March 21, 1985

MEMORANDUM TO THE CONFERENCE

Re: Case Held for Hayes v. Florida, No. 83-6766

Spikes v. Indiana, No. 84-5035

Petr committed two burglary-rapes and left fingerprints at the scene of one of these crimes. The victims identified the perpetrator as a tall, young black man with an afro hairstyle, a light colored jacket, and a blue baseball cap with "Cat Diesel Power" printed on it. The day after the second rape, a policeman stopped petr, who matched the description in every particular. ✓ The officer, the State later stipulated, did not have probable cause to arrest at the time. Nonetheless, petr agreed to accompany the officer to the station. At the station petr was fingerprinted, and about two hours after his arrival at the station house, the police determined that his fingerprints matched the latent prints at the crime scene, and petr was placed under formal arrest. The fingerprints were admitted as evidence, and petr was convicted of rape, burglary, and deviate sexual conduct.

The trial court found that petr consented to go to the police station but asked to go in an unmarked car. He was not handcuffed, frisked, interrogated, or read his rights at the time. Under the circumstances, the TC concluded, the stop, fingerprinting, and detention were permissible under Terry v. Ohio. The Indiana S. Ct. affirmed, reasoning (1) that the stop was permissible under Terry; (2) that it would not reweigh the evidence that petr consented to go to the station; and (3) that the routine jailhouse fingerprinting therefore did not violate the fifth amendment and was not an unreasonable search or seizure, because petr was properly in custody. In his petn for cert, petr argued that as a matter of law he did not voluntarily consent to go to the station, since he was a 16-year-old surrounded by 5 police officers. Further, he was "seized" at the station house because he was not free to leave the station house, and a reasonable person would not have believed himself free to leave under the circumstances. Thus, petr argued, his station-house detention without probable cause was a classic unconstitutional arrest case.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 11, 1985

Re: No. 83-6766-Hayes v. Florida

Dear Bill:

Please join me in your concurrence.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 12, 1985

Re: No. 83-6766 - Hayes v. Florida

Dear Byron:

At the end of your opinion, would you please add:

"JUSTICE BLACKMUN concurs in the judgment."

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1985

83-6766 Hayes v. Florida

Dear Byron:

Please add at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

ST 83-6766

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 8, 1985

Re: No. 83-6766 Hayes v. Florida

Dear Byron,

Please join me.

Sincerely,



Justice White

cc: The Conference

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3/8/85



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 28, 1985

Re: 83-6766 - Hayes v. Florida

Dear Byron,

Please join me.

Respectfully,

Justice White

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CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

March 8, 1985

No. 83-6766 Hayes v. Florida

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

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