

047 D.A. 1-5-93

FILED

SID J. WHITE

SEP 17 1992

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JOHN DOE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO: 79,508

DISTRICT COURT OF APPEAL
SECOND DISTRICT NO: 91-02739

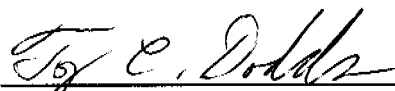
FLORIDA BAR NO: 0650201

PETITIONER'S REPLY BRIEF ON THE MERITS

On Review from the District Court
of Appeal, Second District
State of Florida

LAW OFFICE OF T.W. WEEKS, III

Respectfully submitted,



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TABLE OF CITATIONS

CASES:

Hayes v. Florida, 470 US 811, 105 S.Ct. 1643, 84 L.Ed. 2d 705
(1985)

CONSTITUTIONAL PROVISIONS AND STATUTES:

Section 27.04, Florida Statutes (1989)

ARGUMENT

- I. The State Attorney's Office may not compel an individual pursuant to the State Attorney's investigative subpoena powers to provide handwriting exemplars and fingerprint samples without probable cause in violation of the Fourth Amendment to the United State's Constitution.

The Argument in the Answer Brief centers upon a misconception applied by the Respondent that the individual whose fingerprints and handwriting exemplars was being sought by the State Attorney's Office was in custody. The individual who is the subject of the John Doe subpoena issued in this case was not a prisoner in a jail cell as referred to by the Answer Brief, but rather an individual who was served with the subpoena while not already in custody. The intrusion into the individual's protected space is directly analogous to the citation noted in Hayes v Florida, 470 US 811, 105 S.Ct. 1643, 84 L.Ed 2d 705 (1985).

In Hayes, the police went to the individual's home and had threatened to arrest the individual. In the present situation, the State Attorney's Office has issued a subpoena to the individual to require the individual to appear in order to provide the same types of information that were sought in the Hayes decision. In our present circumstance, the Trial Court afforded the State Attorney's Office with the opportunity to establish probable cause as is required in the Hayes decision, and the State Attorney's Office declined to do so. It is clear that the State was attempting to use as a vehicle Section 27.04, Florida Statutes (1989) as a means

by which to subvert the same constitutional protection afforded by the Hayes decision.

The Respondent also indicates that the Hayes decision might authorize certain procedures where less than probable cause would be permitted for purposes of the seizure of a person and his removal to the police station for purposes of fingerprinting. Hayes at 817. However, the Respondent fails to note that for such a procedure to occur, the judiciary must authorize the seizure of the person. Hayes at 817. In the present citation, the judiciary has refused to authorize the seizure of the person by granting the Motion to Quash the subpoena after having afforded the State the opportunity to address the issue of probable cause.

While the Respondent would like to force the Court to make a determination as to the constitutionality of Section 27.04, Florida Statutes (1989), there is no reason for this Court to stretch to such a resolution. Section 27.04, Florida Statutes (1989), can be read in a constitutional fashion so long as the methods described in the Hayes decision are followed. The only additional requirement that Hayes would place on the State for purposes of issuing a subpoena under Section 27.04, Florida Statutes (1989) stems from the requirement of probable cause when the subpoena is directed to the target of an investigation.

Using the rationale of the Hayes decision, probable cause must exist or there must be prior judicial authorization. Hayes at 815.

The only means employed in the present case by the State Attorney's Office was through an investigative subpoena issued through their subpoena power. The State Attorney's Office is not a part of the judiciary, nor can it be argued that it sits in the same capacity as the judiciary.

As a result, in the absence of the establishment of probable cause of prior authorization by the judiciary, the State Attorney's investigative subpoena should be Quashed and the opinion the Second District Court of Appeal reversed.

CONCLUSION

The decision of the Second District Court of Appeal should be reversed and the Trial Judge's Order reinstated based on the lack of probable cause and the violation of the Fourth Amendment of the United States Constitution.

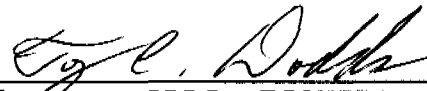
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Michael Cusick, State Attorney's Office, Post Office Box 9000, Drawer SA ,Bartow, Florida, and to Peggy Quince at the Attorney General's Office, 2002 North Lois Avenue, Suite 700, Tampa, Florida 33607, by hand delivery and/or regular U.S. Mail this 14th day of September, 1992.



TONY C. DODDS, ESQUIRE