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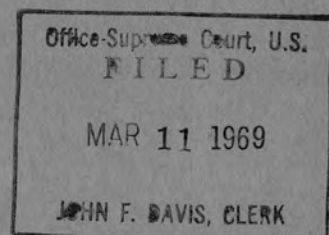
Supreme Court of the United States

OCTOBER TERM

In the Matter of:

----- X
JOHN DAVIS,
Petitioner;
vs.
STATE OF MISSISSIPPI,
Respondent.
----- X

Docket No. 645



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Place Washington, D. C.

Date February 27 1969

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Pt. 2

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REBUTTAL ARGUMENT:

P A G E

Melvyn Zarr, Esq., on behalf of
Petitioner

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- - - -

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 - - - - -x
4 JOHN DAVIS, :

5 Petitioner; :

6 vs. :

No. 645

7 STATE OF MISSISSIPPI, :

8 Respondent. :

9 - - - - -x

10 Washington, D. C.

11 February 27, 1969

12 The above-entitled matter came on for further
13 argument at 10:10 a.m.

14 BEFORE:

15 EARL WARREN, Chief Justice
16 HUGO L. BLACK, Associate Justice
17 WILLIAM O. DOUGLAS, Associate Justice
18 JOHN M. HARLAN, Associate Justice
19 WILLIAM J. BRENNAN, JR., Associate Justice
20 POTTER STEWART, Associate Justice
21 BYRON R. WHITE, Associate Justice
22 THURGOOD MARSHALL, Associate Justice

23 APPEARANCES:

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Assistant Attorney General
State of Mississippi
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Jackson, Mississippi

P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 645, John Davis,
petitioner; versus the State of Mississippi, respondent.

Mr. Zarr, you may continue with your argument.

REBUTTAL ARGUMENT OF MELVYN ZARR, ESQ.

ON BEHALF OF PETITIONER

MR. ZARR: Mr. Chief Justice, may it please the Court: I would like to summarize the major points I made yesterday and then say a few things about the record. The major points were these:

1. That the petitioner was caught up in a police dragnet.

2. That the two detentions of petitioner yielding the two sets of fingerprints were illegal arrest because, in the first place, in neither case was there a warrant or any attempt to show exigent circumstances excusing a warrant; and secondly, even assuming that the warrant requirement could somehow be excused in this case, there was no attempt by the State to show probable cause for arrest.

Next, the fact that these arrests were for investigation only explains, but cannot excuse, the failure to comply with these constitutional safeguards.

Last, that fingerprints are not excepted from operation of the exclusionary rule.

Now, counsel opposite stressed to the Court yesterday

1 that the December 3rd detention, the first detention, was not
2 an arrest, and apparently relied upon the court below's ruling
3 which in relevant part appears at page 59 of the record, which
4 I shall just briefly read. The court below said this:

5 "The officer said that he arrested appellant, but
6 the evidence, which is in no way contraverted, shows that
7 appellant was merely escorted to headquarters for inter-
8 rogation as, in fact, were numerous others in the course
9 of an investigation by police of an unsolved major crime.
10 It is clear from the record that there was no intention to
11 arrest within the accepted legal meaning of the word."

12 Of course, there are two answers to this: (1) It is
13 clear from the record that that statement is wrong; that the
14 only testimony in the record about the December 3rd arrest is
15 that of Officers Griffin and Thompson in which they say they
16 arrested the petitioner and there is nothing to contravert that.

17 The second answer, of course, is that this was an
18 investigative arrest and that, as we have argued, is illegal.

19 I have two evidentiary points.

20 1. I want to stress that the petitioner had done
21 yard work for the woman. On page 17, the interrogation there
22 makes that clear.

23 Next I want to stress that even though Mr. Justice
24 Stewart yesterday correctly observes that she testified that

25 "There was no doubt in my mind about it that Johnny was the one."

1 at other places she was not quite so positive. At page 22,
2 previous to that, she says, "I recognized it was Johnny. I
3 thought it was, but I wasn't perfectly sure right then, but then
4 I knew that nobody else had been in the house but him. I asked
5 him to carry a table through the kitchen where he threw the
6 light where the meter was."

7 On page 30 of the record, on cross-examination, she
8 says in response to the question, "But by light of the flash-
9 light, could you see his face?"

10 "Answer: Yes, sir; true. He had that fascinator,
11 which is a headpiece, over it and I could see through that
12 crocheted part his face and I recognized him, or at least that
13 is who I thought it was. I was pretty sure it was."

14 Q Going back to the first three points you made
15 in summary, the last of which was, or the third of which was,
16 that fingerprints are not excepted from the exclusionary rule,
17 there is the Bynum in the District of Columbia.

18 Are there any other cases on that point?

19 A Not that we could find, Your Honor, that dealt
20 exclusively with fingerprints.

21 Q That is what I am talking about. Thank you.

22 (Whereupon, at 10:10 a.m. the argument in the above-
23 entitled matter was concluded.)
24
25