Florida Law Review

Volume 57 | Issue 2 Article 8

April 2005

Constitutional Law: Convicting Detainees for Refusing to Answer Law Enforcement's Commonsense Inquiries Makes No Commonsense: Hiibel v. Sixth Judicial District Court, 124 S. Ct. 2451 (2004)

Diane J. Zelmer

Hiibel v. Sixth Judicial District Court, 124 S. Ct. 2451 (2004)

*Diane J. Zelmer**

While investigating an assault report, a police officer observed a silver and red GMC truck parked on the roadside with skid marks behind it.[1] Petitioner, who appeared intoxicated,[2] stood outside the truck, and a young woman sat inside the truck.[3] Threatening arrest, the officer requested written identification from Petitioner eleven times.[4] When Petitioner refused to comply, the deputy arrested Petitioner for obstructing an officer in violation of section 199.280 of the Nevada Revised Statutes.[5] The Justice Court of Union Township convicted Petitioner and fined him $250.[6] In a divided opinion, the Sixth Judicial Court affirmed, finding that the application of section 171.123 of the Nevada Revised Statutes[7] did not

---

* To my husband, Bobby, for his unconditional love and support.

1. Hiibel v. Sixth Jud. Dist. Court, 124 S. Ct. 2451, 2455 (2004). The Humboldt County, Nevada Sheriff's Department received a report that a man assaulted a woman in a red and silver GMC truck on Grass Valley Road. *Id.*

2. *Id.* After observing Petitioner's mannerisms, eyes, speech, and odor, the deputy suspected that Petitioner had operated his vehicle while under the influence of alcohol. Hiibel v. Sixth Jud. Dist. Court, 59 P.3d 1201, 1203 (Nev. 2002), *aff'd*, 124 S. Ct. 2451 (2004).

3. *See Hiibel*, 124 S. Ct. at 2455. The record indicates that the officer observed the woman sitting on the passenger's side of the cab of the truck. *Hiibel*, 59 P.3d at 1203.

4. *Hiibel*, 124 S. Ct. at 2455.

5. *Id.* (citing NEV. REV. STAT. 199.280 (2003)). "Hiibel was charged with 'willfully resist[ing], delay[ing], or obstruct[ing] a public officer in discharging or attempting to discharge any legal duty of his office' in violation of [the statute]." *Id.* (first alteration in original). After refusing to identify himself, Petitioner taunted the officer, daring the officer to arrest him. *Id.*

6. *Id.* at 2456. Under Nevada law, Petitioner was charged with a misdemeanor because no dangerous weapon was used. *Hiibel*, 59 P.3d at 1203 n.1.

7. *Hiibel*, 124 S. Ct. at 2456. In relevant part, section 171.123 of the Nevada Revised Statutes provides:

> 1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.
>
> . . . .
>
> 3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer.
>
> 4. A person must not be detained longer than is reasonably necessary to effect

violate Petitioner's Fourth Amendment rights.[8] Reasoning that the obligation for Petitioner to identify himself during a brief investigatory stop was a commonsense requirement, the Supreme Court of Nevada also affirmed.[9] The United States Supreme Court granted certiorari and, in affirming the decision, HELD, that the Nevada stop-and-identify statutes did not contravene Petitioner's Fourth Amendment guarantees.[10]

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, . . . and no Warrants shall issue, but upon probable cause."[11] A "seizure" occurs not only upon arrest, but also when an officer restrains an individual's liberty by either physical force or assertion of authority.[12] The Fourth Amendment does not prohibit all searches or seizures, but only those that are unreasonable.[13] Implicit in the Fourth Amendment is the notion that each person should maintain individual control of his own person[14] and remain free from abusive police practices.[15]

In *Terry v. Ohio*, the Court rejected application of the "probable cause" Warrant Clause requirement of the Fourth Amendment because the context required police to act swiftly in response to on-the-spot observations.[16] Instead, focusing on the general notions underlying the Fourth Amendment,[17] the Court employed a balancing test, weighing the

---

the purposes of this section, and in no event longer than 60 minutes.

NEV. REV. STAT. 171.123 (2003).

8. *Hiibel*, 124 S. Ct. at 2456. The district court reasoned that identifying persons suspected of domestic violence, assault, and driving under the influence is a "reasonable and necessary" requirement for protection of officers and victims. *Hiibel*, 59 P.3d at 1203-04.

9. *Hiibel*, 59 P.3d at 1207. Broadening the reasoning of the district court, the Nevada Supreme Court stated that identification of any person suspected of a crime is necessary for protection of the public and law enforcement. *Id.*

10. *Hiibel*, 124 S. Ct. at 2457. Supporting its position, the Court indicated that the officer's "commonsense" request for identification justified arresting Petitioner. *See id.* at 2460.

11. U.S. CONST. amend. IV.

12. Terry v. Ohio, 392 U.S. 1, 20 n.16 (1968). The test is whether "a reasonable person would have believed that he was not free to leave" given the surrounding circumstances. United States v. Mendenhall, 446 U.S. 544, 554 (1980).

13. Elkins v. United States, 364 U.S. 206, 222 (1960).

14. *Terry*, 392 U.S. at 9 (quoting Union Pac. Ry. v. Botsford, 141 U.S. 250, 251 (1891)).

15. Brown v. Texas, 443 U.S. 47, 52 (1979) (citing Delaware v. Prouse, 440 U.S. 648, 661 (1979)).

16. *Terry*, 392 U.S. at 20. The officer in *Terry* suspected a contemplated robbery after observing three individuals peering into a store window and conferring among themselves. *Id.* at 6. The officer approached the three suspects and patted down their clothing, seizing concealed weapons. *Id.* at 6-7.

17. *Id.* The Court noted that the notions underlying the warrant procedure were applicable in this context even though the probable cause standard was not. *Id.*

government's interest against that of the private citizen.[18] The *Terry* Court utilized a two-prong reasonableness test to determine whether the officer's conduct was "justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place."[19]

Identifying a narrow exception for the protection of law enforcement officers,[20] the *Terry* Court concluded that a search for weapons is reasonable when an officer believes that an individual is armed and dangerous.[21] The Court reasoned that the officer's conduct of patting down the outside of the suspects' clothing in search for weapons represented the tempered act of a police officer who responded quickly to protect himself and others from potential danger.[22] Furthermore, the officer limited the scope of the intrusion to the discovery of concealed weapons.[23] On policy grounds, the Court acknowledged that the lower standard of reasonable suspicion was justified because the circumstances of a *Terry* stop "amount to a mere 'minor inconvenience and petty indignity.'"[24] Concurring, Justice White acknowledged that police interrogation is a common investigative procedure but opined that a refusal to answer questions during an investigatory stop is no basis for arrest.[25]

Subsequently, in *Brown v. Texas*, the Court acknowledged that the central consideration when applying the balancing test is to ensure that the government does not arbitrarily invade or restrict a citizen's freedom solely based on an officer's unfettered discretion.[26] As such, a seizure is unreasonable unless legitimate societal interests require seizure of a particular individual.[27] The effectiveness is determined by "the degree to

---

18. *Id.* at 20-21 (citing Camara v. Mun. Court, 387 U.S. 523, 534-37 (1967)).

19. *Id.* at 20.

20. *See id.* at 27. The officer's authority is limited to searches strictly relating to the exigencies of weapon discovery. *Id.* at 25-26.

21. *Id.* at 27. The Court indicated that an officer acts reasonably in drawing specific inferences from the facts, not from his own hunch or unparticularized suspicion. *Id. But see* Kenneth Gavsie, Note, *Making the Best of "Whren": The Problems with Pretextual Traffic Stops and the Need for Restraint*, 50 FLA. L. REV. 385, 387 (1998) (discussing the limited right of an officer to act on a hunch when detaining a motorist pursuant to the Supreme Court's holding in *Whren v. United States*, 517 U.S. 806 (1996)).

22. *Terry*, 392 U.S. at 28.

23. *Id.* at 29-30. The protection of the officer and bystanders was the sole justification of the search. *Id.* at 29. Therefore, in accordance with the Fourth Amendment, the officer's search was confined to what was minimally necessary to discover the weapons and disarm the suspects. *Id.* at 30.

24. *Id.* at 10-11 (quoting People v. Rivera, 201 N.E.2d 32, 36 (N.Y. 1964)).

25. *Id.* at 34 (White, J., concurring).

26. Brown v. Texas, 443 U.S. 47, 51 (1979) (citing Delaware v. Prouse, 440 U.S. 648, 654-55 (1979); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)).

27. *Id.* at 51. A search is not unreasonable if neutral criteria limit the officer's conduct. *See id.*

which the seizure advances the public interest."[28] When detaining a person, officers must have reasonable suspicion[29] that the detainee is involved in criminal activity.[30]

In *Brown*, the Court held that the officer violated the appellant's Fourth Amendment rights when the officer detained the appellant and required him to identify himself pursuant to title 8, section 38.02 of the Texas Penal Code.[31] The Court found that, standing alone, appellant's presence in an alley frequented by drug users failed to meet the reasonable suspicion standard.[32] Because no basis existed for suspecting misconduct, the right to personal security outweighed the public's interest in combatting criminal activity.[33]

In *Hayes v. Florida*, the Court rejected the reasonable suspicion standard, favoring the more stringent probable cause standard outside the context of an arrest.[34] The Court considered whether an officer, in the absence of probable cause or a warrant, could transport, detain, and fingerprint a suspect without obtaining consent, prior judicial authorization, or probable cause.[35] Citing *Davis v. Mississippi*, the Court noted that although fingerprinting is a less serious intrusion, temporary detention at a police station for fingerprinting exceeded the bounds of investigative stops authorized under *Terry*.[36] The Court held that Fourth Amendment protection applies when an officer without a warrant or probable cause "forcibly remove[s] a person from his home or *other place in which he is entitled to be* and transport[s] him to the police station, where he is detained, although briefly, for investigative purposes."[37]

In dicta, the *Hayes* majority attempted to limit its holding to those circumstances where a suspect is physically removed off-site, suggesting that an officer may fingerprint a suspect reasonably believed to be connected with a crime during a brief detention in the field.[38] However, the majority noted that the officer must perform the fingerprinting procedure

---

28. *Id.*

29. *Id.* Objective facts must support a reasonable suspicion that a citizen is implicated in a crime. *Id.*; *see also Terry*, 392 U.S. at 30 (requiring police to reasonably suspect that a citizen is involved in a crime before briefly detaining him).

30. *Brown*, 443 U.S. at 51 (citing *Prouse*, 440 U.S. at 663; *Brignoni-Ponce*, 422 U.S. at 882-83).

31. *Id.* at 53 (citing TEX. PENAL CODE ANN. § 38.02 (Vernon 1974)).

32. *Id.* at 52.

33. *Id.*

34. Hayes v. Florida, 470 U.S. 811, 814 (1985).

35. *Id.* at 812.

36. *Id.* at 814 (citing Davis v. Mississippi, 394 U.S. 721, 727 (1969); Terry v. Ohio, 392 U.S. 1 (1968)).

37. *Id.* at 816 (emphasis added).

38. *Id.*

"with dispatch" to establish or negate the suspect's involvement with the crime.[39] Justice Brennan, joined by Justice Marshall, concurred in the judgment but criticized the majority's dicta, opining that any on-site fingerprinting procedure also must meet the standards established in *Terry*.[40] In particular, the concurring Justices suggested that on-site fingerprinting is not a justifiable intrusion under the limitations of *Terry* because it is not a necessary procedure to protect the officer from bodily harm.[41]

In the instant case's constitutional challenge, while acknowledging that the police officer asked for written identification,[42] the instant Court limited its analysis to the Nevada statute requiring only that a suspect disclose his name.[43] Throughout its decision, the instant Court highlighted the *Terry* doctrine, which permits an officer who has a reasonable suspicion to briefly detain a suspect for investigative purposes.[44] However, the instant Court noted that the investigatory stop must be justified, be reasonably related in scope, be limited in time frame, and not resemble an arrest.[45]

Utilizing the *Terry* balancing test, the instant Court concluded that the Nevada statute met the reasonableness standard of the Fourth Amendment because the identity request related directly to the purpose of the *Terry* stop.[46] The instant Court found that obtaining a suspect's identity serves an important governmental interest because identity provides information regarding a suspect's criminal, violent, and mental disorder behaviors.[47] Reasoning that the Nevada statute did not alter the duration or location of the *Terry* stop, the instant Court concluded that no Fourth Amendment violation occurred.[48]

Further, the instant Court rejected Petitioner's argument that the Nevada statute contravened the probable cause standard required under the Fourth Amendment, and the Court, in effect, allowed an officer to arrest

---

39. *Id.* at 817.

40. *Id.* at 819 (Brennan, J., concurring in the judgment).

41. *See id.* (Brennan, J., concurring in the judgment).

42. Hiibel v. Sixth Jud. Dist. Court, 124 S. Ct. 2451, 2455 (2004). The officer asked Petitioner whether "he had 'any identification on [him].'" *Id.* (alteration in original). The instant Court understood this as a request for a driver's license or some other written identification. *Id.*

43. *Id.* at 2457. The instant Court adopted the Nevada Supreme Court's interpretation of section 171.123(3) of the Nevada Revised Statutes, requiring that a suspect communicate his name to an officer through the means of his or her choice. *Id.*

44. *See id.* at 2458; *supra* notes 29-30 and accompanying text.

45. *Hiibel*, 124 S. Ct. at 2457 (citing United States v. Sharpe, 470 U.S. 675, 682 (1985); United States v. Place, 462 U.S. 696, 709 (1983); Dunaway v. New York, 442 U.S. 200, 212 (1979)).

46. *Id.* at 2459-60.

47. *Id.* at 2458.

48. *Id.* at 2459.

on the basis of mere reasonable suspicion.[49] The instant Court acknowledged well-established limitations of the *Terry* stop as adopted in *Brown* and *Hayes* to address the concern of abusive and arbitrary police conduct.[50] Nonetheless, the instant Court emphasized the *Hayes* dicta, suggesting that an officer who meets the reasonable suspicion standard of *Terry* may obtain a suspect's identity by compelling the suspect to acquiesce to fingerprinting during a brief detention.[51] Reasoning that the request for identification was a commonsense inquiry reasonably related to the circumstances of the *Terry* stop, the instant Court held that the Nevada statute did not circumvent the probable cause guarantee of the Fourth Amendment.[52]

Moreover, although the instant Court acknowledged a lengthy history supporting a detainee's right to decline answering interrogatories during an investigatory stop, the majority rejected this history as noncontrolling dicta.[53] Stating that a detainee's legal obligation to identify himself arises from the Nevada statute and not from the Fourth Amendment, the instant Court found that such dicta did not address the question at issue.[54] Three dissenting Justices criticized the majority, opining that this type of strong dicta, which has remained undisturbed for over twenty years, is a statement of the law to the legal community.[55] Recognizing that the instant Court's decision may extend to requiring a suspect to produce a license number or residence address, the dissenting Justices expressed concerns regarding the far-reaching implications of the majority's decision.[56]

While the instant Court recognized the need to balance the government's interest against the intrusion on the suspect's liberties, it nevertheless disregarded *Brown* in its analysis.[57] Ending its discussion without analysis by simply acknowledging an important governmental interest[58] in the request for identification during a *Terry* stop,[59] the majority

---

49. *Id.*
50. *Id.* at 2459-60.
51. *Id.* (citing Hayes v. Florida, 470 U.S. 811, 817 (1985)).
52. *Id.* at 2460.
53. *Id.* at 2458-59.
54. *Id.* at 2459.
55. *Id.* at 2465 (Breyer, J., dissenting).
56. *Id.* at 2465-66 (Breyer, J., dissenting).
57. *See id.* at 2458-59. *But cf.* Brown v. Texas, 443 U.S. 47, 50-51 (1979) ("Consideration of the constitutionality of such seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.").
58. *Hiibel*, 124 S. Ct. at 2458 (holding that an identity request during a *Terry* stop serves a strong governmental interest because it may inform the officer of a suspect's criminal, mental, and violent record). *But cf.* Terry v. Ohio, 392 U.S. 1, 20 (1968) (requiring the officer's action to reasonably relate in scope to the circumstances justifying the stop). Arguably, the governmental interest does not survive the scope test because it is justified on Petitioner's potential past actions

ignored facts relating to the individual's interest against intrusion.[60] Moreover, the instant Court did not consider the gravity of the public concern or the degree to which the public interest was advanced.[61] Hence, the majority ignored the policy of protecting citizens from arbitrary invasion by an officer's unfettered discretion—a central concern underlying the balancing test.[62]

Even though the majority stated that the foregoing concern is met by the historic two-prong reasonableness test, the instant Court negated the test's potential effectiveness with its broad application of *Terry*.[63] Although the second prong of the reasonableness test strictly limits the scope of the officer's conduct to the circumstances justifying the specific stop,[64] the majority indicated that an identity request is central to all *Terry* stops.[65] In effect, the instant Court eliminated the second prong of the reasonableness test for all requests involving identity.[66] The instant Court's identity generalization dangerously abolished the personal intrusion factor as well as the requirement to measure the degree to which the intrusion advances the public's interest.[67]

---

and not on the current battery investigation. *See Hiibel*, 124 S. Ct. at 2458.

59. While the instant Court acknowledged the investigation as a *Terry* stop, the majority failed to establish when the stop actually implicated the Fourth Amendment. *See Hiibel*, 124 S. Ct. at 2458.

60. *See id. But cf. Brown*, 443 U.S. at 50-52 (balancing interests in favor of the personal right to security absent objective facts supporting reasonable suspicion).

61. *See Hiibel*, 124 S. Ct. at 2458. In the instant case, Petitioner's identity served no purpose to connect him with the instant suspected battery crime, and thus, the request served no public interest. *See id.* Moreover, the instant Court ignored other nonintrusive opportunities to obtain Petitioner's identity. *See id.* at 2455; Hiibel v. Sixth Jud. Dist. Court, 59 P.3d 1201, 1203 (Nev. 2002), *aff'd*, 124 S. Ct. 2451 (2004). For example, the officer could have requested information from the female passenger or searched the DMV database for information relating to the vehicle's license plate, including ownership and insurance records.

62. *See Hiibel*, 124 S. Ct. at 2458. *But cf. Brown*, 443 U.S. at 51-52 (emphasizing the central concern of the balancing test).

63. *See Hiibel*, 124 S. Ct. at 2455-60.

64. *See supra* note 58 and accompanying text.

65. *See Hiibel*, 124 S. Ct. at 2459 (holding that "identity has an immediate relation to the purpose, rationale, and practical demands of a *Terry* stop" and "[t]he threat of criminal sanction helps ensure that the request for identity does not become a legal nullity"). Here, the instant Court mistakenly supported its position on the supposed risk of "legal nullity" rather than on standards required under Fourth Amendment jurisprudence. *See id.* Especially troublesome is the Court's position in using criminal sanction for enforcement of an unprecedented position. *See id.* at 2456, 2461; *see also* Hayes v. Florida, 470 U.S. 811, 819 (1985) (Brennan, J., concurring in the judgment) (disregarding the Court's strained effort to uphold on-site fingerprinting as reasonable, opining that any on-site detention requires application of the standards established in *Terry* to justify the intrusion on personal liberties).

66. *See Hiibel*, 124 S. Ct. at 2459.

67. *See id.* Arguably, an officer need only show reasonable suspicion to require a suspect to provide his driver's license, fingerprints, hair follicle, blood, or any other matter containing identity

Moreover, in finding that the request was reasonably related to the *Terry* stop because it was a "commonsense" inquiry unrelated to the purpose of obtaining an arrest, the instant Court created a two-prong test that circumvents the scope requirement in all cases, including those not involving identity.[68] The instant Court's failure to narrow the definition of "commonsense" may lead to an overly broad interpretation,[69] permitting states to enact criminal statutes that prohibit failure to comply with a variety of police requests.[70] Such a precedent ignores preconditions necessary under Fourth Amendment jurisprudence to initiate the officer's conduct.[71]

Further, the instant Court misapplied *Terry* by disregarding the underlying purpose central to the narrow *Terry* exception,[72] as well as the express limitations established therein.[73] Although an arrest inherently requires transportation of a detainee to the police station,[74] the instant Court found that the Nevada statute did not change the location or duration of the *Terry* stop.[75] Further, the majority's opinion is devoid of any analysis justifying how conduct authorized by the Nevada statute does not resemble a traditional arrest.[76] Thus, while the majority rejected application of specific *Terry* limitations to the circumstances of the arrest, it nonetheless unconvincingly applied the *Terry* reasonable suspicion

---

information. *See id.* at 2465-66 (Breyer, J., dissenting); *Hayes*, 470 U.S. at 819 (Brennan, J., concurring in the judgment).

68. *See Hiibel*, 124 S. Ct. at 2460.

69. *See id.* A broad interpretation of "commonsense" may support conviction on a detainee's refusal to answer any of the officer's questions during a *Terry* stop. *See id.* at 2465-66 (Breyer, J., dissenting); *Hayes*, 470 U.S. at 819 (Brennan, J., concurring in the judgment). Broad application of the "commonsense" standard also may allow officers to require production of related documentation. *See Hiibel*, 124 S. Ct. at 2460; *id.* at 2465-66 (Breyer, J., dissenting); *Hayes*, 470 U.S. at 819 (Brennan, J., concurring in the judgment). Such a precedent creates extensive powers for officers to circumvent the Fourth Amendment protection from unreasonable searches and seizures by requesting such information during a *Terry* stop. *See Hiibel*, 124 S. Ct. at 2459-60; *Hayes*, 470 U.S. at 819 (Brennan, J., concurring in the judgment). Moreover, a "commonsense" test allows an officer to procure an arrest with less than probable cause. *See Hiibel*, 124 S. Ct. at 2459.

70. *See Hiibel*, 124 S. Ct. at 2460; *supra* note 67.

71. *See Hiibel*, 124 S. Ct. at 2460; Terry v. Ohio, 392 U.S. 1, 28-29 (1968).

72. *See* Terry v. Ohio, 392 U.S. 1, 29 (1968) (stating that the purpose central to the *Terry* exception was to protect officers in potentially dangerous situations).

73. *See id.* (requiring reasonableness at inception, that an officer's conduct and manner reasonably relate in scope to the purpose of the investigation, brevity, no change in location, and the absence of circumstances resembling an arrest).

74. Transportation to a police station likely does not meet the brevity requirement of a *Terry* stop. *See Hayes*, 470 U.S. at 815-16.

75. *Hiibel*, 124 S. Ct. at 2459 (citing United States v. Place, 462 U.S. 696, 709 (1983); Dunaway v. New York, 442 U.S. 200, 212 (1979)).

76. *See Hiibel*, 124 S. Ct. at 2455-60; *Dunaway*, 442 U.S. at 212.

standard for both the investigatory stop and the procurement of an arrest.[77] The majority failed to acknowledge the policy that justifies the lower standard of *Terry* because Petitioner's arrest and conviction were, in fact, *more* than minor inconveniences that *do* result in indignity.[78]

Moreover, the instant Court overlooked the holding in *Hayes*, which required a warrant or a showing of probable cause to transport a detainee to a police station from a place where the detainee is entitled to be.[79] Instead, the instant Court adopted the controversial dicta in *Hayes*, suggesting that an officer may fingerprint a suspect at the site of detention if the officer reasonably believes he can establish or negate a suspect's connection with a crime.[80] However, in addition to ignoring the lengthy history of undisturbed law,[81] the Court misapplied the *Hayes* Court, in dicta, by failing to establish exactly how Petitioner's identity would determine his connection with the reported assault.[82] Further, while the *Hayes* dicta limited its opinion to authorization of an officer's *request* for information,[83] the instant Court expanded the officer's authority by establishing justification for *arrest* if the detainee refuses to comply.[84]

In sum, the holding may be interpreted as the instant Court's policy judgment, favoring production of identity in all circumstances that meet the low threshold of reasonable suspicion.[85] By focusing on the government's interest in preventing identity from becoming a legal nullity,[86] the instant Court discounted factors and policies underlying Fourth Amendment jurisprudence as upheld in *Brown*, *Terry*, and *Hayes*.[87] The severe result is criminal sanction of behavior unrelated to the crime

---

77. *Hiibel*, 124 S. Ct. at 2458-60. The Court applied a double standard in utilizing the reasonable basis test to justify arrest while failing to acknowledge the change of brevity and duration of arrest. *See id.* at 2459. Under Fourth Amendment jurisprudence, the more appropriate test requires a showing of probable cause before procuring an arrest. *See Hayes*, 470 U.S. at 814-15 (holding that a showing of probable cause is required when transporting a suspect to a police station even when the detainee is not arrested).

78. *See generally Hiibel*, 124 S. Ct. 2451. *But cf. Hayes*, 470 U.S. at 816; *Terry*, 392 U.S. at 10-11.

79. *See Hiibel*, 124 S. Ct. at 2459-60; *Hayes*, 470 U.S. at 816. Presumably, since the officer did not arrest Petitioner on other grounds, Petitioner was located in a place where he was "entitled to be." *See Hiibel*, 124 S. Ct. at 2455.

80. *Hiibel*, 124 S. Ct. at 2459-60; *Hayes*, 470 U.S. at 816-17.

81. *See Hiibel*, 124 S. Ct. at 2459-60; *supra* text accompanying note 55.

82. *See Hiibel*, 124 S. Ct. at 2460. Instead, the Court required the request to have only a reasonable relation to the initial detention. *Id. But cf. Terry*, 392 U.S. at 20.

83. *Hayes*, 470 U.S. at 816.

84. *See Hiibel*, 124 S. Ct. at 2459-60.

85. *See supra* text accompanying notes 53-56.

86. *See supra* note 65 and accompanying text.

87. *See supra* text accompanying notes 24, 26-28, 36-37, 40-41.

that created the initial suspicion.[88] Additionally, the instant Court's expansion and misapplication of its own Fourth Amendment precedent dangerously narrows a citizen's rights in cases far beyond verbal identity.[89] Extension of the instant Court's decision beyond ad hoc application could make commonsense the legal nullity.

88. *See Hiibel*, 124 S. Ct. at 2460 (suggesting authority for an officer to request on-site fingerprinting but failing to establish a basis for arrest if the detainee refused to comply).

89. *See supra* notes 68-71 and accompanying text.