The Burger Court Opinion Writing Database

Florida v. Royer

460 U.S. 491 (1983)

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

February 17, 1983

RE: 80-2146 - Florida v. Royer

Dear Bill:

I join your dissent.

Regards,

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1983

PERSONAL

Re: 82-2146 - Florida v. Royer

Dear Lewis:

I have re-read the opinions in this case, and I entertain the hope you will decide not to stay with the proposed Court's opinion - one that is giving Bill Brennan pause.

If it would help, I am willing to try to get Bill Rehnquist to modify the somewhat flippant opening that weakens the very strong case for reversing this monstrous nonsense of the Florida court. It is an opinion that will surely make Miami the world center for drug pushers - if it is not already so.

If things stand, I am considering a separate dissent stating that this is the kind of judicial aberration that justly undermines public confidence in the courts. I can say it undermines my confidence in the system.

I hope you will take another hard look.

Regards,

Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 15, 1982

RE: No. ~~81~~ 80-2146 Florida v. Royer

Dear Chief:

Byron has agreed to undertake the opinion for the Court in the above.

Sincerely,

/Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1983

RE: 80-2146, Florida v. Royer

Dear Byron:

Your proposed opinion is outstanding in so many respects that I wish it didn't raise for me some serious reservations.

At conference, you will remember that I took the position that the state court's decision was relatively narrow. The court simply held that at some point after the initial stop the officers' seizure of Royer matured into an arrest unsupported by probable cause. His consent to the search of his suitcases, therefore, was tainted by the illegal arrest. I felt that there was ample support in the record for that conclusion and that the state court should be affirmed on this ground. To do so, I thought, would avoid (1) difficult questions surrounding the legality of the initial stop and (2) if legal under Terry, the permissible scope of investigations attendant to such stops.

Frankly, if we are forced to reach the question of the legality of the initial stop, I would hold that it was a "seizure" unsupported by the reasonable suspicion required by Terry. Although I don't think a Fourth Amendment "seizure" occurs when police simply approach citizens on the street and ask them questions, once officers, as here, have identified themselves and asked a traveller to provide identification and his airline ticket I think the traveller has been "seized" within the meaning of the Fourth Amendment and that such a seizure must be supported by reasonable suspicion. I thought you said as much in your dissent in Mendenhall, see 446 U.S. at 570, 570 n.4, and were supported by language in Terry, 392 U.S. at 16 ("It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person"). At least arguably, Potter's standard in Mendenhall, 446 U.S. at 554, also supports this view. The officers in this case did not have reasonable suspicion to support the initial stop. The case is thus on all fours with your dissent in Mendenhall. 446 U.S. at 571-73.

However, I would avoid the question because I do not think it is necessary to the decision. I'd do so particularly because certain parts of your opinion strongly suggest that you would find the initial stop to be legal. In note 7, you appear to reject the state

court's view (expressed in dictum) that mere similarity with the drug courier profile is insufficient to constitute the articulable suspicion required for a Terry stop. On page 10 you state that "asking for and examining Royer's ticket and his driver's license were no doubt permissible in themselves...." As I explained above, I disagree and the facts you subsequently cite to justify a finding of a "seizure" under Potter's standard in Mendenhall amount, I think, to much more than a simple "seizure"; they amount to a full-fledged arrest. On page 13, you suggest that if Royer had consented to a search on the spot, "the search could have been conducted with Royer present in the area where the bags were retrieved by Officer Johnson and any evidence recovered would have been admissible against him." Doesn't this necessarily assume the legality of the initial stop? Otherwise the evidence would not be admissible.

I also would avoid the question of the permissible scope of a legitimate Terry "investigative stop." Based on an apparent assumption that the initial stop was legal, however, you appear to address the permissible scope of the attendant investigation. You suggest, for example, that the state could have used trained dogs to inspect Royer's luggage. This suggestion is troublesome for two reasons. Ought we not set aside any questions as to a "dog-sniff" case since we've granted Place to

address just these questions? Won't some of your language in note 10 anticipate our decision in that case? It is possible that we could decide that a "dog-sniff" does involve a search and that such a search must be based on probable cause rather than on reasonable suspicion. Yet you state at the end of note 10 that "the officers, with founded suspicion, could have detained Royer for the brief period during which Florida authorities at busy airports seem able to carry out the dog-sniffing procedure." I also wonder whether the Court would agree with the statements in your opinion that suggest such a search would be justified as part of a Terry stop. In Terry, the frisk for weapons was upheld solely on the ground of the compelling safety interests involved. In Brignoni-Ponce, we endorsed investigative stops in which officers are permitted to question drivers and passengers about their citizenship and immigration status, and to ask them to explain suspicious circumstances, but we expressly stated that "any further detention or search must be based on consent or probable cause." 422 U.S. at 882. The extent of the investigation contemplated by your opinion appears to go far beyond the limited holdings of those two cases.

I have one final comment. I think it is possible to read your discussion at the bottom of page 6 and at the top of page 7 to suggest that a strong governmental

interest may justify a temporary detention or investigative stop on something less than Terry cause. I wonder if this is what you meant; if not, might it not be helpful to make more clear that Terry standards apply even to Brignoni-Ponce-type stops.

I agree, of course, with your conclusion in this case and hope you can relieve my worries so that I can join your opinion. I'll certainly try.

Sincerely,

WJB, Jr.

Justice White

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

From: **Justice Brennan**

Circulated: MAR 1 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

ON WRIT OF CERTIORARI TO THE ~~UNITED STATES~~ COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

[March ——, 1983]

JUSTICE BRENNAN, concurring in the result.

In this case the Florida District Court of Appeal's decision rested on its holding that at some point after the initial stop the officers' seizure of Royer matured into an arrest unsupported by probable cause. *Royer* v. *State*, 389 So. 2d 1015, 1019 (Fla. App. 1980) (en banc). Royer's consent to the search of his suitcases, therefore, was tainted by the illegal arrest. *Id.*, at 1019–1020. The District Court of Appeal's conclusion is amply supported by the record and by our decision in *Dunaway* v. *New York*, 442 U. S. 200 (1979). I therefore concur in the Court's judgment affirming the District Court of Appeal's judgment. But the Court reaches certain issues that it clearly need not reach to support the affirmance.

To the extent that the Court endorses the legality of the officers' initial stop of Royer, see *post*, at ——, n. 3 (REHNQUIST, J., dissenting), it was wholly unnecessary to reach that question. For even assuming the legality of the initial stop, the Court correctly holds, and I agree, that the officers' subsequent actions clearly exceeded the permissible bounds of a *Terry* "investigative" stop. *Ante*, at ——, ——. "[A]ny 'exception' that could cover a seizure as intrusive as that in this case would threaten to swallow the general rule that Fourth Amendment seizures are 'reasonable' only if based on probable cause." *Dunaway* v. *New York*, *supra*, at 213.

Stylistic Changes + p. 5

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

From: **Justice Brennan**

Circulated: _____

Recirculated: 3/7/83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[March ——, 1983]

JUSTICE BRENNAN, concurring in the result.

In this case the Florida District Court of Appeal's decision rested on its holding that at some point after the initial stop the officers' seizure of Royer matured into an arrest unsupported by probable cause. *Royer* v. *State*, 389 So. 2d 1015, 1019 (Fla. App. 1980) (en banc). Royer's consent to the search of his suitcases, therefore, was tainted by the illegal arrest. *Id.*, at 1019–1020. The District Court of Appeal's conclusion is amply supported by the record and by our decision in *Dunaway* v. *New York*, 442 U. S. 200 (1979). I therefore concur that the District Court of Appeal's judgment should be affirmed. But the plurality reaches certain issues that it clearly need not reach to support an affirmance.

To the extent that the plurality endorses the legality of the officers' initial stop of Royer, see *post*, at ——, n. 3 (REHNQUIST, J., dissenting), it was wholly unnecessary to reach that question. For even assuming the legality of the initial stop, the plurality correctly holds, and I agree, that the officers' subsequent actions clearly exceeded the permissible bounds of a *Terry* "investigative" stop. *Ante*, at ——, ——. "[A]ny 'exception' that could cover a seizure as intrusive as that in this case would threaten to swallow the general rule that Fourth Amendment seizures are 'reasonable' only if based on probable cause." *Dunaway* v. *New York*, *supra*, at 213. Thus, most of the plurality's discussion of the permissi-

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

File

From: **Justice White**

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At Byron's request, I reviewed this prior to circulation. He has made substantial revisions - chiefly in response to my suggestions.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

ON WRIT OF CERTIORARI TO THE ~~UNITED STATES~~ COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

[January ——, 1983]

I've advised him I'll join. LFP Jan 4, 83

JUSTICE WHITE delivered the opinion of the Court.

We are required in this case to determine whether the Court of Appeal of Florida, Third District, properly applied the precepts of the Fourth Amendment in holding that respondent Royer was being illegally detained at the time of his purported consent to a search of his luggage.

I

On January 3, 1978, Royer was observed at Miami International Airport by two plain-clothes detectives of the Dade County, Florida, Public Safety Department assigned to the County's Organized Crime Bureau, Narcotics Investigation Section.[1] Detectives Johnson and Magdalena believed that Royer's appearance, mannerisms, luggage, and actions fit the so-called "drug courier profile."[2] Royer, apparently un-

[1] The facts set forth in this opinion are taken from the en banc decision of the Florida District Court of Appeal, Third District, 389 So. 2d 1015, 1015–18 (Fla. App. 1980), and from the transcript of the hearing on the motion to suppress contained in the Joint Appendix. App. 11A–116A.

[2] The "drug courier profile" is an abstract of characteristics found to be typical of persons transporting illegal drugs. In Royer's case, the detectives attention was attracted by the following actions which were considered to be within the profile: a) Royer was carrying American Tourister luggage, which appeared to be heavy, b) he was young, appeared to be between 25–35, c) he was casually dressed, d) Royer appeared pale and ner-

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

From: **Justice White**

Circulated: 1/4/83

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2146

FLORIDA, PETITIONER *v.* MARK ROYER

ON WRIT OF CERTIORARI TO THE ~~UNITED STATES~~ COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

[January ——, 1983]

JUSTICE WHITE delivered the opinion of the Court.

We are required in this case to determine whether the Court of Appeal of Florida, Third District, properly applied the precepts of the Fourth Amendment in holding that respondent Royer was being illegally detained at the time of his purported consent to a search of his luggage.

I

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[2] The "drug courier profile" is an abstract of characteristics found to be typical of persons transporting illegal drugs. In Royer's case, the detectives attention was attracted by the following actions which were considered to be within the profile: a) Royer was carrying American Tourister luggage, which appeared to be heavy, b) he was young, appeared to be between 25–35, c) he was casually dressed, d) Royer appeared pale and ner-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 8, 1983

Re: 80-2146 - Florida v. Royer

Dear Bill,

It would appear to me that we are at issue and that you should go ahead and circulate your views.

You are quite right that I do not view the initial stop as a seizure. Neither did a seizure occur when the officers asked for and Royer voluntarily produced his ticket and driver's license. If that much is unclear in the draft, I shall eliminate any confusion. For me, the seizure did not occur until the officers, without Royer's consent, retained possession of his ticket and driver's license after examining them, therefore effectively eliminating Royer's freedom of movement. Of course, any other restraint of the person, verbal or physical, that would lead a reasonable person to believe that he was being detained would be enough.

Hence, I think Royer was seized on the concourse, but I also think that by that time the officers had reasonable suspicion to believe that Royer was carrying drugs and could temporarily detain him. They then exceeded the speed limit for Terry stops, hence tainting Royer's consent to search.

As for the reference to trained dogs, I had no thought of attempting to bring this case down prior to Place. In any event, no Court of Appeals had disagreed with what I say about what use of trained dogs is permissible. No doubt, if the Court holds that dog-sniffing requires probable cause or if their use as part of a Terry stop is rejected, what I say would not fly at all. But that depends on how the votes fall.

Also, I think one has to strain very hard to read the carryover paragraph on pp. 6-7 as suggesting that Brignoni-Ponce stops for questioning may be made on less than reasonable suspicion. I have never thought that to be the case. As Lewis put it, 422 U.S., at 873, "We hold that when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion." Thus, I would not even have used the word "even" as you did on p. 5 of your letter.

There will be writing on the other side, no doubt insisting that the officers be given more room than the circulating draft indicates they should have. That makes the situation about par for the course.

Sincerely yours,

Justice Brennan

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1983

Re: 80-2146 - Florida v. Royer

Dear Harry,

Don't hurry. I shall ask that Royer go over.

Sincerely,

Byron

Justice Blackmun

Copies to the Conference

cpm

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

From: **Justice White**

Circulated: _____

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pp. 1, 5, 8, 9, 10-14, 16 & stylistic changes throughout

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[March ——, 1983]

JUSTICE WHITE announced the Court's judgment and delivered an opinion in which JUSTICES MARSHALL, POWELL and STEVENS joined.

We are required in this case to determine whether the Court of Appeal of Florida, Third District, properly applied the precepts of the Fourth Amendment in holding that respondent Royer was being illegally detained at the time of his purported consent to a search of his luggage.

I

On January 3, 1978, Royer was observed at Miami International Airport by two plain-clothes detectives of the Dade County, Florida, Public Safety Department assigned to the County's Organized Crime Bureau, Narcotics Investigation Section.[1] Detectives Johnson and Magdalena believed that Royer's appearance, mannerisms, luggage, and actions fit the so-called "drug courier profile."[2] Royer, apparently un-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 29, 1983

MEMORANDUM TO THE CONFERENCE

Cases held for No. 80-2146 - FLORIDA v. ROYER

80-1158 - Florida v. Rodriguez

This is a petition for rehearing (cert. denied 5/26/81)

In this case resp was approached by detectives in the Miami airport after the officers observed resp and two other men acting suspiciously. Respondent consented to a search of his luggage. The FL DCA found that the initial approach of the detectives was a seizure without probable cause or articulable suspicion. Resp's consent to the search of his suitbag was tainted by the unlawful seizure.

I voted to deny and now move that a response be requested. It may be that the initial approach of the officers was not a seizure under the plurality and dissenting opinions in Royer.

81-307 - West v. United States

Petr was approached by detectives in Miami airport because of petr's suspicious behavior. The officers requested and received petr's ticket and identification. Petr declined to consent to a search of his bags and was permitted to board his flight to Boston. In Boston, DEA agents who had been alerted by the Miami police, approached petr and asked more questions. The agents sought consent for a search of the bags, but petr again declined. The agents then informed petr that they would retain his bags, but he was free to go. The bags were kept for approx. one hour until a drug detecting dog arrived. The dog alerted, a warrant was obtained, and a search revealed cocaine.

On the issues involved in Royer the decision below appears correct and no remand is required. The case also involves the same issues as United States v. Place, No. 81-1617, and should be held for that decision.

HAB

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 9, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 80-2146 - FLORIDA v. ROYER

82-809 - Tabeling v. United States

Here petr, observed by a Florida police officer, purchased a one-way ticket to Denver, did not check any baggage, looked around a lot, and reversed directions several times. The Florida officer alerted federal agents in Denver to these facts. Arriving in Denver, petr was observed by DEA agents looking around and conducting himself as he had done in Florida. Petr made a phone call and averted his face when anyone approached the phone booth. Petr then left the airport and went to a taxi-stand. There he was approached a by DEA agent who asked petr to accompany him to a security office 30 yards away. The agent made clear that petr was not compelled to accompany him. Once in the office, the agent gave petr Miranda warnings and asked for identification. Petr produced his ticket and some hotel receipts. The agents asked about the contents of petr's hand luggage and petr said the agents were free to look. The bag contained $38,000 in cash. Petr denied ownership and declined to tell the agents who owned the money or how he got it. The DEA contacted the IRS; an IRS agent arrived and interviewed petr. The DEA agent kept the cash and the hotel receipts, giving petr a receipt for the money. Petr was released. Sometime later, petr was indicted and tried for conspiracy to distribute controlled substances. His motion to suppress the seized money was denied. CA7 affirmed in an unpublished order rejecting petr's claim that he had been seized and citing their opinion in Black v. United States, No. 81-2339 (cert denied 4/4/83). In Black, the court applied the Mendenhall definition of a seizure and held that no seizure had occurred. It was also held there that even if there was a seizure, there was reasonable suspicion to justify it.

I would not grant or GVR on the fact-specific questions of whether there was a seizure or whether there was reasonable suspicion. The uncontradicted testimony of the DEA agent at the hearing on the motion to suppress was that it was made clear to petr that the trip to the security office was completely voluntary. The agent did not have possession of petr's identification or ticket. The case is sufficiently different from Royer that I would deny.

BRW

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 17, 1983

Re: No. 80-2146-Florida v. Royer

Dear Byron:

Please join me.

Sincerely,

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 6, 1983

Re: No. 80-2146 - Florida v. Royer

Dear Byron:

As you will have surmised, I shall await the dissent in this case.

Sincerely,

Harry

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 10, 1983

Re: No. 80-2146 - Florida v. Royer

Dear Byron and Bill:

As of the moment, I plan to write briefly in separate dissent in this case.

Sincerely,

Harry

Justice White
Justice Rehnquist

cc: The Conference

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

From: **Justice Blackmun**

Circulated: FEB 16 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[February ——, 1983]

JUSTICE BLACKMUN, dissenting.

JUSTICE POWELL, concurring in *United States* v. *Mendenhall*, 446 U. S. 544 (1980), observed:

> "The public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit. Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs . . . may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement." *Id.*, at 561–562.

In my view, the police conduct in this case was minimally intrusive. Given the strength of society's interest in overcoming the extraordinary obstacles to the detection of drug traffickers, such conduct should not be subjected to a requirement of probable cause. Because the Court holds otherwise, I dissent.

I

The Florida Court of Appeal, Third District, held that respondent Royer had been arrested without probable cause before he consented to the search of his luggage, and that his

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 3, 1983

Re: No. 80-2146 - Florida v. Royer

Dear Byron:

In view of Bill Brennan's vote, I am now changing the word "Court," where it appears in my separate dissent, to "plurality." This probably will be ready for recirculation no later than tomorrow.

Sincerely,

Harry

Justice White

cc: The Conference

"Court" changed to "plurality" - and page 7

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAR 4 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[March ——, 1983]

JUSTICE BLACKMUN, dissenting.

JUSTICE POWELL, concurring in *United States* v. *Mendenhall*, 446 U. S. 544 (1980), observed:

> "The public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit. Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs . . . may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement." *Id.*, at 561–562.

In my view, the police conduct in this case was minimally intrusive. Given the strength of society's interest in overcoming the extraordinary obstacles to the detection of drug traffickers, such conduct should not be subjected to a requirement of probable cause. Because the Court holds otherwise, I dissent.

I

The Florida Court of Appeal, Third District, held that respondent Royer had been arrested without probable cause before he consented to the search of his luggage, and that his

December 14, 1982

80-2146 Florida v. Royer

Dear Byron:

I appreciate your giving me the opportunity to take a look at your draft opinion.

Subject to the comments below, I will be glad to join you. On a preliminary reading, I was under the impression that your draft could be read as suggesting a narrowing of our "investigative stops" cases even in the setting of an airport.

A more careful reading allays my concern to a great extent. My interest in this case (and ultimate willingness to grant it) was the hope that we could shed helpful light on the large problem of investigative stops at airports in the "war" on traffic in drugs. I would not have voted to take the case simply to decide, as we ultimate do here, that the search was coerced.

Part II of your draft, in which preliminary observations are made, does address investigative stops in general terms.

I suggest that you consider quoting from John's opinion in Summers (452 U.S. 692, particularly the paragraph that begins on page 699. In footnote 9 on that page, John also draws the distinction between random stops and investigative stops made on the basis of "articulable and reasonable suspicion".

Summers also is authority for requiring a court in an investigative stop case - "to examine both the character of the official intrusion and its justification". As John says, "special law enforcement interests" may constitute a justification. These exist to a high degree in this type of case. Moreover, an investigative stop in an airport - such as that involved in this case - constitutes a minimum intrusion on ones privacy.

Here, Byron, I repeat in substance views I expressed in Mendenhall. The public interest in preventing drug traffic is great, the problems of detection are unique, and the intrusion upon a traveler's privacy when stopped in an airport for brief questioning is minimal. The public is accustomed to considerable regulation and restraints when traveling by air. People, including guards and air line employees always are close by. This is quite a different environment from a street encounter with police where the suspect may be alone. We all have to go through the metal detectors, and we often see people questioned. As I mentioned, I was even asked to accompany an officer to a private room because the detector kept emitting signals. I escaped being searched only by exhibiting my Supreme Court identification.

Your dissent in Mendenhall in no way inhibits you now from including in this opinion a weighing of the degree of intrusion against these special law enforcement interests and problems that are implicated.

I have one other specific point. You rely a good deal on Dunaway. To be sure, there is language in Dunaway that is not inappropriate here. Yet the facts were so egregious that I view the case itself as essentially irrelevant. Do you think your emphasis of Dunaway may be read more broadly than the facts of that case would justify.

I have put a question mark or two in the margin of your draft.

If you could make changes along the foregoing lines, I will be happy to join you - though I agree that whether there was consent to the search of the suitcases is an extremely close question.

Sincerely,

Justice White

LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 5, 1983

80-2146 Florida v. Royer

Dear Byron:

Please join me.

Sincerely,

LFP

Justice White

lfp/ss

cc: The Conference

January 11, 1983

80-2146 Florida v. Royer

Dear Byron:

I agree that it is a good idea to divide your opinion into discrete parts.

It is particularly important, as your letter of the 8th suggests, to give the police the guidance that I think the opinion will do. I would think that at least two other Justices would be pleased to join the portion of your opinion that recognizes the right of police, where reasonable suspicion exists, to stop and question a suspect briefly.

Thank you for sharing Bill Brennan's views with John and me. I agree that you and Bill are "at issue", and I will stay with you.

John's opinion last Term in Ross clarified the law with respect to the automobile exception. It would be a shame if we lose this opportunity to make a comparable clarification with respect to investigative stops, as would be accomplished by your opinion.

Sincerely,

Justice White

lfp/ss

cc: Justice Stevens

February 10, 1983

80-2146 Florida v. Royer

Dear Byron:

I am still with you, and still think it would be constructive to divide your opinion into several parts.

My guess is that the Chief will be inclined to join Bill. I had a brief conversation with the Chief about this case. He will not join your judgment because he thinks there was consent to the search. I suggested that he wait to see your recirculation, as I thought he would find portions of your opinion in accord with his views.

I do think Bill's note 6 (p. 7-8) is rather telling. I had intended mentioning to you the absence of any reference to the "drug courier profile" reliance. Despite the criticism that it is open to subjective judgments, the record indicates that its use has been remarkably productive. The federal guidelines on its use are quite strict. It may be helpful with the CJ if you added language favorable to the profile's use, prticularly by DEA agents.

Sincerely,

Justice White

lfp/ss

February 28, 1983

PERSONAL

82-2146 Florida v. Royer

Dear Chief:

I have not overlooked your recent letter suggesting that I reconsider my vote in this case.

I am distressed that the Court has fractionated. As I said in the brief conversation we had about this case a few weeks ago, I am persuaded that Byron's opinion merits our support. He has moved from my understanding of his position in Mendenhall, and accepted what I thought was your position - certainly mine - as to the right to stop and question on the basis of reasonable suspicion. Moreover, he does not limit this to airports, but adopts it as a general principle. It is this principle that prompts me to think Byron's opinion is constructive.

I know that you are concerned primarily about his judgment. He would affirm the Florida court's conclusion that the search of the suitcase was unlawful. I agree with Byron that under the circumstances the "consent" was coerced: Royer was alone in the presence of two officers in a small windowless room. They had retained his ticket and luggage. There was no way respondent could have left under these circumstances and very few people would have had the presence of mind to say nothing.

I hope that Byron will divide his opinion into several parts, some of which I am confident you can join. I believe Bill Brennan is the only person who has not taken a position. The very fact that he has not joined Byron may suggest serious reservations as to what Byron has written. I hope that Bill does not persuade Byron to make changes.

Sincerely,

The Chief Justice

lfp/ss

March 17, 1983

80-2146 Florida v. Royer

Dear Byron:

In view of the attention Mendenhall has received - and particularly Harry's use of it - I am circulating the enclosed little concurring opinion.

I continue to think your opinion will be quite helpful.

Sincerely,

Justice White

lfp/ss

MAR 17 1983

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

From: **Justice Powell**

Circulated: MAR 17 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[March ——, 1983]

JUSTICE POWELL, concurring.

I join the plurality opinion. This is an airport "stop for questioning" case similar in its general setting to that before us in *United States* v. *Mendenhall*, 446 U. S. 544 (1980).[1] The plurality opinion today has discussed helpfully the principles applicable to investigative stops for questioning. Since I was the author of one of the opinions in *Mendenhall*, *id.*, at 560, I write briefly to repeat that the public has a compelling interest in identifying by all lawful means those who traffic in illicit drugs for personal profit. As the plurality opinion emphasizes, *ante*, at 15, the facts and circumstances of investigative stops necessarily vary. In view of the extent to which air transportation is used in the drug traffic, the fact that the stop at issue is made by trained officers in an airport warrants special consideration.[2]

This case, however, is strikingly different from *Mendenhall* in its circumstances following the lawful initial question-

[1] As the plurality notes, *ante*, at 12, n. 9, five Justices in *Mendenhall* were of the view that the respondent in that case had not been illegally detained, and therefore that she had consented to be searched.

[2] Since 1974 the Drug Enforcement Administration has assigned highly skilled agents to the major airports as part of a nationwide program to intercept drug couriers. These agents are guided in part by a "drug courier profile" that identifies characteristics that experience has shown to be relevant in identifying suspects. See *Mendenhall*, 446 U. S., at 562.

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 18, 1982

Re: No. 80-2146 Florida v. Royer

Dear Chief:

I will be happy to undertake a dissent in this case.

Sincerely,

WHR

The Chief Justice

Copies to: Justice Blackmun
Justice O'Connor

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 5, 1983

Re: No. 80-2146 Florida v. Royer

Dear Byron:

In due course I will circulate a dissent in this case.

Sincerely,

WHR

Justice White

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: FEB 8 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[February ——, 1983]

JUSTICE REHNQUIST, dissenting.

The Court's meandering opinion contains in it a little something for everyone, and although it affirms the reversal of a judgment of conviction, it can scarcely be said to bespeak a total indifference to the legitimate needs of law enforcement agents seeking to curb trafficking in dangerous drugs. Indeed, in both manner and tone, the opinion brings to mind the old nursery rhyme:

> "The King of France
> With forty thousand men
> Marched up the hill
> And then marched back again."

The opinion nonetheless, in my view, betrays a mind-set more useful to those who officiate at shuffleboard games, primarily concerned with which particular square the disc has landed on, than to those who are seeking to administer a system of justice whose twin purposes are the conviction of the guilty and the vindication of the innocent. The Court loses sight of the very language of the Amendment which it purports to interpret:

> "The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated . . . ." (Emphasis added).

9 p 3-6, 11-14

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: FEB 9 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[February ——, 1983]

JUSTICE REHNQUIST, dissenting.

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PP 2, 13, 14

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: FEB 14 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[February ——, 1983]

JUSTICE REHNQUIST, dissenting.

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: FEB 17 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[February ——, 1983]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, and JUSTICE O'CONNOR join, dissenting.

The Court's meandering opinion contains in it a little something for everyone, and although it affirms the reversal of a judgment of conviction, it can scarcely be said to bespeak a total indifference to the legitimate needs of law enforcement agents seeking to curb trafficking in dangerous drugs. Indeed, in both manner and tone, the opinion brings to mind the old nursery rhyme:

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> "The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable*

STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: MAR 4 1983

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[March ——, 1983]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, and JUSTICE O'CONNOR join, dissenting.

The plurality's meandering opinion contains in it a little something for everyone, and although it affirms the reversal of a judgment of conviction, it can scarcely be said to bespeak a total indifference to the legitimate needs of law enforcement agents seeking to curb trafficking in dangerous drugs. Indeed, in both manner and tone, the opinion brings to mind the old nursery rhyme:

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> "The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable*

STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Rehnquist**

Circulated: MAR 16 1983

Recirculated: _____

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

FLORIDA, PETITIONER *v.* MARK ROYER

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

[March ——, 1983]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting.

The plurality's meandering opinion contains in it a little something for everyone, and although it affirms the reversal of a judgment of conviction, it can scarcely be said to bespeak a total indifference to the legitimate needs of law enforcement agents seeking to curb trafficking in dangerous drugs. Indeed, in both manner and tone, the opinion brings to mind the old nursery rhyme:

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> "The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable*

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1983

Re: 80-2146 - Florida v. Royer

Dear Byron:

Please join me.

Respectfully,

John

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1983

No. 80-2146 Florida v. Royer

Dear Byron,

I will await the dissent in this case.

Sincerely,

Sandra

Justice White

Copies to the Conference

13

HAB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 9, 1983

No. 80-2146 Florida v. Royer

Dear Bill,

I agree with your eloquent dissent that the officers acted upon a reasonable and articulable suspicion of criminal activity, and that Royer consented to talk to the officers, to go to the room, and to the search of his luggage.

I think no more needs to be said because these grounds are sufficient to resolve the issues presented. I would prefer not to determine whether the officers had probable cause to arrest Royer at the conclusion of their initial conversation.

If you should decide to omit that aspect from the dissent, I could join it. If you should decide to keep the dissent intact, I will plan to circulate a simple statement explaining my one reservation.

Sincerely,

Sandra

Justice Rehnquist

cc: The Chief Justice
Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 14, 1983

No. 80-2146 Florida v. Royer

Dear Bill,

Please join me in the Third Draft of your dissenting opinion.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference