10-1979

Reid v. Georgia

Lewis F. Powell Jr.

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lfp/ss 6/21/80

79-448 Reid v. Georgia

MR. JUSTICE POWELL, concurring.*

This case is similar in many respects to United States v. Mendenhall, ____ U.S. ____ (May 27, 1980). The defendant in that case also was stopped by DEA agents at an airport for identification, she thereafter accompanied the agents to their office for questioning, and was searched there. The case presented a number of questions, and Justices here expressed divergent views on some of them.

The threshold question in Mendenhall, as in this case, was whether there was a "seizure" within the meaning of

* I agree, on the basis of the fragmentary facts apparently relied upon by the DEA agents in this case, there was no justification for a "seizure".

the Fourth Amendment when the agents initially stopped the defendant only for the purpose of asking identification questions. Mr. Justice Stewart, joined by Mr. Justice Rehnquist, concluded that the mere stopping of a person for identification purposes was not a seizure so long as the individual could walk away:

> "We conclude that a person who has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Slip op. at 7.

Mr. Justice Brennan also noted that "[i]t is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." Id., at 1, quoting Terry v. Ohio, 392 U.S., at 34 (White, J., concurring).

On the basis of facts that were remarkably similar to those in the present case, Mr. Justice Stewart and Mr. Justice Rehnquist concluded that there was no seizure.

Three other Justices, in a concurring opinion in Mendenhall, did not consider it necessary to decide whether there had been a seizure. It was their view that even assuming that the stop did constitute a seizure, the DEA agents had articulable and reasonable grounds for suspicion that the individual who had deplaned from an airplane was engaging in criminal activity. They therefore did not violate the Fourth Amendment by stopping such person for routine questioning.

These Justices expressly stated that they did not necessarily

disagree with the views of Mr. Justice Stewart and Mr. Justice Rehnquist. Slip. op., at ___, n. 1.*

As the Supreme Court of Georgia decided this case prior to this Court's decision in Mendenhall, it did not consider whether in fact there had been any seizure of the petitioner. Rather, it assumed that the stop for routine identification questioning constitued a seizure, and addressed its opinion to the question whether this nevertheless was justified by arituculable and reasonable grounds of suspicion.

*Mr. Justice White, joined by Mr. Justice Brennan, Mr. Justice Marshall and Mr. Justice Stevens, filed a dissenting opinion in Mendenhall in which they concluded that there had been a seizure, and that there were not insufficient grounds to justify it.

As the initial seizure issue was not considered by the courts below, it is open for them on remand to address it in light of the issues expressed in Mendenhall.

4

6/23/80

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 23 1980

Recirculated: _____

with whom Mr. Justice Blackmun joins

79-448 Reid v. Georgia

MR. JUSTICE POWELL, concurring.[1]

This case is similar in many respects to United States v. Mendenhall, ___ U.S. ___ (May 27, 1980), in which a defendant observed walking through an airport was stopped by DEA agents and asked for identification. The threshold question in Mendenhall, as here, was whether the agent's initial stop of the suspect constituted a seizure within the meaning of the Fourth Amendment. Mr. Justice Stewart, joined by Mr. Justice Rehnquist, was of the opinion that the mere stopping of a person for identification purposes is not a seizure:

> "We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Slip op. at 9.[2]

Thus, on the basis of facts remarkably similar to those in the present case, Mr. Justice Stewart and Mr. Justice

Rehnquist decided that no seizure had occurred.

My concurring opinion in Mendenhall, joined by the Chief Justice and Mr. Justice Blackmun, did not consider the seizure issue because it had not been raised in the courts below. Even if the stop constituted a seizure, it was my view that the DEA agents had articulable and reasonable grounds for believing that the individual was engaged in criminal activity. Therefore, they did not violate the Fourth Amendment by stopping that person for routine questioning without regard to resolution of the seizure question. I expressly stated, however, that my decision not to reach the seizure issue did not necessarily indicate disagreement with the views of Mr. Justice Stewart and Mr. Justice Rehnquist. Slip op., at ___, n. 1.[3]

The state courts, which decided this case before our decision in Mendenhall, did not consider whether the petitioner had been seized. Rather, those courts apparently assumed that the stop for routine identification questioning constituted a seizure, and addressed only the question whether the agent's actions were justified by articulable and reasonable grounds of suspicion. Because we similarly do not consider the initial seizure question in our decision today, that issue remains open for consideration by the state courts in light of the opinions in Mendenhall.

FOOTNOTES

1. I agree, on the basis of the fragmentary facts apparently relied upon by the DEA agents in this case, there was no justification for a "seizure".

2. Mr. Justice Stewart also noted that "'[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets.'" Id., at 7, quoting Terry v. Ohio, 392 U.S., at 34 (White, J., concurring). See also ante, at n.2.

3. Mr. Justice White, joined by Mr. Justice Brennan, Mr. Justice Marshall, and Mr. Justice Stevens, filed a dissenting opinion in Mendenhall in which they concluded that ~~there had been a seizure, and that there were not insufficient grounds to justify it.~~ the respondent had been detained in violation of the Fourth Amendment.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

6-24-80

Circulated: _____

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SUPREME COURT OF THE UNITED STATES

TOMMY REID, JR. *v.* STATE OF GEORGIA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

No. 79-448. Decided June —, 1980

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, concurring.[1]

This case is similar in many respects to *United States* v. *Mendenhall*, — U. S. — (May 27, 1980), in which a defendant observed walking through an airport was stopped by DEA agents and asked for identification. The threshold question in *Mendenhall*, as here, was whether the agent's initial stop of the suspect constituted a seizure within the meaning of the Fourth Amendment. MR. JUSTICE STEWART, joined by MR. JUSTICE REHNQUIST, was of the opinion that the mere stopping of a person for identification purposes is not a seizure:

> "We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Slip op., at 9.[2]

Thus, on the basis of facts remarkably similar to those in the present case, MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST decided that no seizure had occurred.

My concurring opinion in *Mendenhall*, joined by THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN, did not con-

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sider the seizure issue because it had not been raised in the courts below. Even if the stop constituted a seizure, it was my view that the DEA agents had articulable and reasonable grounds for believing that the individual was engaged in criminal activity. Therefore, they did not violate the Fourth Amendment by stopping that person for routine questioning without regard to resolution of the seizure question. I expressly stated, however, that my decision not to reach the seizure issue did not necessarily indicate disagreement with the views of MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST. Slip op., at —, n. 1.[3]

The state courts, which decided this case before our decision in *Mendenhall*, did not consider whether the petitioner had been seized. Rather, those courts apparently assumed that the stop for routine identification questioning constituted a seizure, and addressed only the question whether the agent's actions were justified by articulable and reasonable grounds of suspicion. Because we similarly do not consider the initial seizure question in our decision today, that issue remains open for consideration by the state courts in light of the opinions in *Mendenhall*.

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[3] MR. JUSTICE WHITE, joined by MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS, filed a dissenting opinion in *Mendenhall* in which they concluded that the respondent had been detained in violation of the Fourth Amendment.

1,2

Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

6-24-80

Circulated: JUN 25 1980

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Thus, on the basis of facts remarkably similar to those in the present case, MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST decided that no seizure had occurred.

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

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From: Mr. Justice Powell

6-24-80

Circulated: JUN 25 1980

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Recirculated: _____

SUPREME COURT OF THE UNITED STATES

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No. 79-448. Decided June —, 1980

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Stevens
Mr. Justice Rehnquist

From: Mr. Justice Powell

6-24-80

Circulated: JUN 25 1980

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SUPREME COURT OF THE UNITED STATES

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To: The Chief Justice
Mr. [illegible]
Mr. [illegible]
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

6-26-80

Circulated: _____

2nd DRAFT

Recirculated: JUN 26 1980

SUPREME COURT OF THE UNITED STATES

TOMMY REID, JR. *v.* STATE OF GEORGIA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

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