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Reid v. Georgia

Lewis F. Powell Jr.

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79-448 Reid v. Georgia

MR. JUSTICE POWELL, concurring.*

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".

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The conclude that a person who has been 'asised' within the beauthy of the fourth Assembler only if, in view of all of the circumstances surfaceding the limitation, a responsible person would have believed that he was not free to laws. Slip op, as \$1.5

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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.

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.*

caseprior 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.

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To: The Chief Justice
lir. Justice Bronner
lir. Justice Stewark
lir. Justice Unite
lir. Justice Harchall
lir. Justice Blackmun
lir. Justice Rehaguist
lir. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 2 3 1980

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79-448 Reid v. Georgia

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"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.

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

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 wolation of the Fourth Amendment.

To: The Chief Justice

M: (ce Brennan

Mr. (ce Brennan

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6-24-80

From: Mr. Justice Powell

1st PRINTED DRAFT Circulated:

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

with

No. 79-448. Decided June -, 1980

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joing, 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:

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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.

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6-24-80

To: The Chief Tistice Mr. Just Mr. Justice Stewart men Mr. Just of White Mr. Justice Comball Mr. Justine Blackmun Mr. Justica Rehmquist Mr. Justice Stevens From: Mr. Justice Powell

Circulated: JUN 25 1980

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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*.

* 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 de-

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6-24-80

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Mr. Justin Bronnian Mr. Justice Star rt.

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To: The Chier Justice UL Nr 100 81 16 24 o- lice This functice Marginal Mr. Justice Blanks on Mr. Justine Bohno et Mr. Justice Stavens

From: Mr. Justice Powell

Circulated:

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Reciroulated: JUN 26 1980

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