



10-1982

Florida v. Royer

Lewis F. Powell Jr.

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Another Fla case in which the state courts have applied a stricter standard for a "drug profile" stop & search at an airport, than either Stewart or I applied in Mendenhall. I'd like to

PRELIMINARY MEMORANDUM

SEP 28 1981
Summer List 13, Sheet 3

No. 80-2146

FLORIDA

v.

ROYER

Cert to Fla.S.Ct. are not good.
on this issue, but the facts here

The "stop" issue was not addressed as Fla Ct found "search" invalid

State/Criminal Timely (w/ext)

SUMMARY: Florida complains because a state appellate court held that 65 pounds of marijuana taken from resp's luggage after an airport stop based on a "drug courier profile" were inadmissible.

FACTS AND HOLDING BELOW: Two Dade County narcotics officers stopped resp after he left an airline ticket counter in the Miami International Airport. Their stop was based on a "drug courier profile" which Dade County officers adapted from the DEA profile used in United States v. Mendenhall, 446 U.S. 544 (1980). In

Deny - The court probably should take a case to decide if drug profile can be basis of an airport stop. But this isn't a good case to do it.

D72

this case four of resp's characteristics matched the profile: (1) He had two heavy American Tourister luggage bags (the smuggler's standard brand); (2) He appeared nervous and as if he might be looking for police officers; (3) He paid for his ticket to New York with cash; (4) He wrote only the name "Holt" on the baggage rather than adding his address. The officers identified themselves and asked resp if he had a moment to talk and he said yes. They asked to see his plane ticket and some other identification and he complied. The ticket was also in the name "Holt" while his driver's license identified him as "Mark Royer." Asked about the discrepancy, resp said that he had a friend make the reservation for him. He was apparently not asked why he put "Holt" on his bags.

The officers told resp that they suspected he was transporting narcotics. Without returning his plane ticket, they asked him to accompany them to a nearby room. He accompanied them. One of the officers, without asking, retrieved resp's bags and brought them to the room, which was a large closet with a small desk and two chairs. It was about forty feet from the spot where the officers approached resp.

In the room the officers asked whether he would open his suitcases. An officer testified that resp then took a key and opened one of the suitcases. (Resp testified that he had emptied his pockets at the officers' request and that they opened the suitcase.) The other suitcase had a combination lock. Resp said he did not know the combination, but agreed to let the officers open it. One of them opened it with the aid of a screwdriver. Marijuana was found in both bags.

Resp lost a motion to suppress the marijuana. The court found that resp had consented to the searches. As a separate ground, it concluded that there was no time to obtain a search warrant before resp's plane left. A panel of the Florida Court of Appeals for the Third District affirmed that decision. The panel consisted of two senior judges and a dissenting active judge. The Florida Court of Appeals for the Third District then met en banc and unanimously reversed the panel. Royer v. State, 389 So.2d 1007 (1980).

The en banc court rejected the trial court's conclusion that resp had voluntarily consented to the search. The court first found that resp was involuntarily confined at the time the suitcases were opened since he had been told he was suspected of transporting narcotics, taken to a small room, and the police had both his ticket and luggage. The court then found that there was no probable cause for the arrest. It stated that "a mere similarity with the contents of a drug courier profile is insufficient even to constitute the articulable suspicion required for a Terry stop. E.g., Reid v. Georgia ...; contra United States v. Mendenhall, supra (opinion of Powell, J., concurring in part, concurring in the judgment)." 389 So.2d at 1019. The court went on to say that even were the rule otherwise, no probable cause existed in this case despite the discrepancy between the name on resp's bag and ticket and the name on his driver's license. Therefore the court concluded that the resp's consent was tainted and invalid. The court summarily rejected the trial court's other ground--that exigent circumstances justified the search--since exigent circumstances

justify a failure to obtain a warrant but do not take the place of probable cause.

The Florida Supreme Court declined to review the en banc decision.

CONTENTIONS: Petr contends that this case is governed by Mendenhall. Noting the "contra" signal preceding the appellate court's citation of Mendenhall quoted above, petr argues that stops based on similarity to a "drug courier profile" are permissible. As in Mendenhall the resp was found upon questioning to be travelling under a different name and accompanied the officers to a room for further questioning without protest.

Petr contends that Reid v. Georgia, 448 U.S. 438 (1980), created confusion but is reconciliable. In Reid the Court held that a Georgia court erred in concluding that a seizure based on a drug courier profile was lawful. On remand from Reid, petr notes that the Georgia court found the seized drugs admissible because the defendants in that case had voluntarily consented to a search. Resp consented in this case as well, petr argues, and therefore the marijuana should have been found admissible.

Moreover, petr argues, the Third District of the Florida Court of Appeals has repeatedly reversed trial court admissions of drugs seized in the Miami International Airport. Since Miami is a major narcotics terminal, efforts to slow the flow of drugs have been seriously disrupted. Because Mendenhall and Reid have not fully resolved matters, petr contends that the Court should hear this case and make clear that stops based on similarity to a "drug courier profile" are permissible.

Resp argues that the opinion below is consistent with Mendenhall. The "contra" citation was mere dicta because the court below did not base its decision on the unlawfulness of the stop. Instead the opinion rests on the conclusion that resp had been arrested without probable cause at the time he consented to the search. Resp notes that the officer stated at the suppression hearing that he did not have probable cause to arrest resp until he opened the suitcases. Mendenhall is distinguishable because resp was told he was suspected of carrying drugs and the officers had his plane ticket and his luggage. Furthermore, in Mendenhall the defendant was affirmatively told that she could withhold her consent to be searched. Resp could not have reasonably thought he was free to leave.

DISCUSSION: The Court has repeatedly declined to review opinions of the Third District of the Florida Court of Appeals suppressing the fruits of airport searches, most recently in Florida v. Harrison, No. 80-1449, cert. denied 5/4/81 (CJ and HAB would grant; WHR voted off the record to grant). Unlike Harrison, the opinion below was clearly based on federal law and is not a candidate for remand under California v. Krivda, 409 U.S. 33 (1972).

Interpretation of of Mendenhall is difficult, in part because only Justice Rehnquist joined the part of Justice Stewart's opinion concerning whether the defendant was "seized" ^{stopped} by the officers who stopped her in the airport terminal based on a drug courier profile. Justice Powell, joined by the Chief Justice and Justice Blackmun, decided that the issue should not be reached because the courts below had not reached it. 446 U.S.

at 443. They again declined to reach the issue in Reid. 448 U.S. at 443.

This case does not squarely present the issue of whether the airport stop based on the "drug courier profile" was a seizure. As resp argues, the holding below was based on the conclusion that resp had been arrested without probable cause at the time he consented to the search. Mendenhall is reasonably distinguished because the police had resp's plane ticket and luggage and did not tell him he could withhold his consent. The "contra" signal and the lower court's statement that mere similarity to a drug courier profile does not justify a stop amount to either an alternative holding or mere dicta. Therefore, although this case is worthy of discussion, it may not be an appropriate case for resolving the unsettled questions from Mendenhall and Reid.

There is a response.

7/27/81

Wright

Op at 389 So.2d 1007

September 28, 1981

Court
Argued, 19...
Submitted, 19...

Voted on....., 19...
Assigned, 19...
Announced, 19...

No. 80-2146

Byron said
this is an
"innert" case
— not a "stop"

FLORIDA

VB.

ROYER

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for me 10/4
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"stop"
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left
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in Mendenhall
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presented

Grant

Fla search cost
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a rehearing yet

[illegible]

No. 80-2146

	HOLD FOR	CERT.	JURISDICTIONAL STATEMENT	MERITS	MOTION	ABSENT	NOT VOTING
		G D N POST DIS AFF REV AFF G D					
Burger, Ch. J.							
Brennan, J.							
Stewart, J. XXXXXXXXXX							
White, J.							
Marshall, J.							
Blackmun, J.							
Powell, J.							
Rehnquist, J.							
Stevens, J.							
O'Connor, J.							

Although the case involves an "arrest" rather than a seizure the practical effect is the same: the police may not use the drug profile to stop potential drug couriers
DL

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

No. 80-2146, Florida v. Royer

From: Justice Rehnquist

Circulated: NOV 11 1981

Recirculated: _____

Justice Rehnquist, dissenting

I find it all but inexplicable that four Members of the Court are unwilling to grant certiorari to review a judgment of the Florida District Court of Appeal which, in my opinion, is virtually indistinguishable from our recent decision in United States v. Mendenhall, 446 U.S. 544 (1980), in which a majority of this Court held that there was probable cause to arrest a defendant in an airport search case. Since there is no question that the Florida District Court of Appeal based its decision to suppress the 65 pounds of marijuana in respondent's suitcases searched at the airport upon federal constitutional grounds, and since the state of Florida is the petitioner in this case, the decision of the District Court of Appeal brings into prospect a

new facet of the "Balkanization" of a nation which the founders set out to prevent in the commercial sense when they adopted the United States Constitution. Because of federal constitutional principles enunciated by the Florida District Court of Appeal, the State of Florida is prohibited from using 65 pounds of marijuana found in respondent's suitcase at his trial for smuggling drugs. It has done this virtually in the teeth of our recent decision in United States v. Mendenhall, supra, and not with any desire to be more solicitous of drug smugglers who are apprehended in Florida under the Florida constitution than drug smugglers apprehended elsewhere in the United States. It is doubtless true that this Court cannot review every case which a majority may believe to be wrongly decided by a state court or a lower federal court, but given the dimensions of the drug problem in this country and the well known fact that the Miami area is a principle point of entry for illicit drugs smuggled from South America, I do not see by what rational calculus it can fail to grant certiorari in this case.

The drug-courier profile search is not unfamiliar to this Court. See United States v. Mendenhall, supra, Reid v. Georgia, 448 U.S. 438 (1980). Because the Fourth Amendment analysis undertaken by the Florida District Court of Appeal in this case departs from the principles adopted by a majority of this Court in Mendenhall, I dissent from the denial of certiorari.

The facts in this case bear a strong resemblance to those we examined in Mendenhall. Officers Johnson and Magdalena of the Narcotics Investigation Section of the Dade County Public Safety Department were on duty at Miami International Airport, which is known as a point from which imported illicit drugs are transported by couriers on commercial airlines to other cities.¹ As was the case in Mendenhall, 446 U.S., at 547 & n. 1, Johnson and Magdalena were trained in the use of the drug-courier profile, an abstract of characteristics found in practice to be typical of persons carrying illicit drugs. The officers observed

¹See United States v. Mendenhall, 446 U.S. 544, 562 (1980) (POWELL, J.).

respondent as he was walking across the concourse of the airport toward a ticket counter, carrying two heavily-laden suitcases. Nervous in appearance, respondent was looking around at other persons as if he were looking for police officers. Respondent paid for his ticket to New York, a "target" city, in cash, as is characteristic of the smuggler. Rather than filling out his full name, address, and phone number on the baggage tags furnished by the airline as passengers are typically instructed to do, respondent merely wrote the words "Holt" and "LaGuardia" on each tag.

The officers approached respondent as he left the ticket counter, identified themselves as police officers, and asked respondent if he had a moment to talk. After he answered in the affirmative, the officers asked respondent to show them his airline ticket and some identification. Although his ticket bore the name "Holt," respondent's driver's license was in the name of "Mark Royer." When asked to explain this discrepancy, respondent stated that a friend had made the reservation in the name of

"Holt." When respondent became more nervous, the officers explained that they were narcotics investigators and had reason to suspect that he was transporting illicit drugs. The officers then asked respondent to accompany them to a small room that was adjacent to the concourse so as to be away from the "general population of the Airport." This room was no more than forty feet away. The officers retrieved the suitcases respondent had checked with the airline and brought them to the small room.

Once inside the room, respondent was asked whether he would consent to a search of his suitcases. Respondent produced a key out of his pocket and opened one of the suitcases, but explained that he did not know the combination to the other one. Officer Johnson then asked respondent if he had any objection to the officers opening the second suitcase. Respondent answered, "No, go ahead." Together, the suitcases contained 65 lbs. of marijuana.

The trial court denied respondent's motion to suppress the seizure of the marijuana, expressly finding that respondent had

consented to the search of his suitcases. A panel of the District Court of Appeal affirmed. That court en banc, however, reversed. The en banc court held that respondent was "arrested" when he was escorted to the small room. Despite the fact that respondent had apparently agreed to accompany the officers to the small room, the court explained that the officers had taken respondent's plane ticket and luggage, and that the officers had previously informed him that they had reason to suspect that he was transporting narcotics. Until the suitcases were opened, the court reasoned, the officers did not have probable cause to arrest respondent since similarity with the drug-courier profile is insufficient to establish probable cause. The consent was thus "tainted" by an illegal arrest, and since petitioner was unable to establish proof of "any break in the chain of illegality, [respondent's] consent must be deemed involuntary and thus invalid as a matter of law."

The en banc court distinguished our decision in Mendenhall on the ground that the respondent here was not informed that he

could refuse to consent to the search. The en banc court also concluded that conformity with the drug-courier profile, "without more," is insufficient in any case to establish reasonable suspicion justifying a limited seizure or "stop" under Terry v. Ohio, 392 U.S. 1 (1968). According to the en banc court, the implication of suspicion based upon the profile's characteristics is an example of "the fallacy of the undistributed middle,"² because the profile's characteristics are at least as consistent with innocence as they are with narcotics smuggling.

The en banc court's analysis³ is inconsistent with a

²The "fallacy of the undistributed middle" is a term used in formal logic to explain the invalidity of a syllogism where the middle term, the one which shows the relationship between the premises and the conclusion, does not refer to all members of the class. See L.S. Stebbing, A Modern Introduction to Logic 88 (1948); N. Simco & G. James, Elementary Logic 155-156, 160-161 (1954). Applied to the facts of this case, we have the following invalid syllogism:

All drug couriers exhibit some of the profile's characteristics;

Mark Royer exhibits some of the characteristics;

Therefore, Mark Royer is a drug courier.

The middle term, exhibition of the profile's characteristics, is undistributed because not all persons who exhibit the characteristics are drug couriers.

³The District Court of Appeal's decision was clearly based on federal constitutional grounds. Florida courts treat search and seizure issues identically under the state and federal constitutions. Hetland v. State, 366 So.2d 831, 836

Footnote continued on next page.

majority of this Court's Members who joined either the opinion of JUSTICE STEWART or the opinion of JUSTICE POWELL in Mendenhall.

Under JUSTICE STEWART's analysis in Mendenhall, the officers in this case did not seize⁴ respondent when they approached him in an open airport concourse, identified themselves as police officers, and asked respondent if he had a moment to talk. The officers requested, but did not demand to see respondent's ticket and identification. Since "nothing in the record suggests that the respondent had any objective reason to believe that [he] was not free to end the conversation in the concourse and proceed on [his] way," id., at 555, the officers' initial approach did not constitute a seizure.

(Fla. Dist. Ct. App. 1979), aff'd, 387 So.2d 963 (Fla. 1980).

⁴"[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. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." 446 U.S., at 554.

In Mendenhall, JUSTICE POWELL assumed that the agents had seized the respondent when they approached her, but concluded that since the agents had reasonable suspicion that the respondent was engaging in criminal activity, the agents did not violate the Fourth Amendment by stopping her for routine questioning. Id., at 560. In determining the reasonableness of a stop, a court must consider "(i) the public interest served by the seizure, (ii) the nature and scope of the intrusion, and (iii) the objective facts upon which the law enforcement officer relied in light of his knowledge and experience." Id., at 561. As in Mendenhall, "the public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit." Ibid. Second, as in Mendenhall, the intrusion in the instant case was "quite modest." The respondent was not physically restrained, the agents did not display weapons, and the questioning was brief. Finally, since law enforcement officers are "able to perceive and articulate meaning in given conduct which would be wholly innocent to the untrained

observer," Brown v. Texas, 443 U.S. 47, 52 n.2 (1979), the officers had reasonable suspicion, based upon their observation of objective factors, to believe that respondent was trafficking in illicit drugs. In the instant case, respondent exhibited the behavior of a suspect who appeared to be evading police contact⁵, he purchased a ticket with cash to a target city, he carried heavily-laden suitcases, and failed to fill out his full name and address on his baggage tags as airlines customarily instruct their passengers to do. This is sufficient to conclude that the officers had reasonable suspicion that respondent was engaging in criminal activity.⁶

⁵In this regard, the District Court of Appeal concluded that since police officers are not psychiatrists, they are unable to distinguish between persons who are attempting to evade police contact and those who are simply nervous. This Court, however, has repeatedly emphasized that a trained police officer may draw inferences and make deductions that may elude any untrained person observing the same conduct. See, e.g., United States v. Cortez, 449 U.S. 411, 418 (1981). We have noted as an example the behavior of a suspect who appears to the officer to be evading police contact. See, e.g., United States v. Mendenhall, supra, at 564; United States v. Brignoni-Ponce, 422 U.S. 884-85 (1975). The Florida court's criticism of what obviously was good police work is entirely unjustified under our decisions.

⁶The Florida court's conclusion that an approach based solely on the suspect's conformance with the drug-courier profile
Footnote continued on next page.

Under either approach, the next step in the analysis is to determine whether respondent's consent to accompany the officers to the small room was in fact voluntary or was the product of coercion, and thus tantamount to a "seizure" or an "arrest." As in Mendenhall, respondent was not told that he had to go to the office, but was simply asked, after a brief period of questioning, if he would accompany the officers to the room. There were neither threats nor any show of force. Respondent was informed as to why the officers wished to question him briefly. Although the officers here did not return respondent's ticket prior to their request, I do not see how this alone can render the consent ineffective under the circumstances, given the absence of any objective indicia of coercion. It means that respondent would have to request that the officers return his

is inherently unreasonable is thus contrary to the views of five Members of this Court. Reid v. Georgia, 448 U.S. 438 (1980), is not to the contrary. Reid holds only that under the circumstances in that case, the approaching officers did not have reasonable suspicion in order to effect a lawful seizure. Reid left open the question as to whether a seizure in fact had taken place. Id., at 443 (POWELL, J., concurring).

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ticket before he could enplane for New York; it says absolutely nothing as to whether respondent would have been forcibly restrained had he refused to accompany the officers. Mere nonreturn of the tickets does not transform an apparent consent into an arrest.

This phase of police-citizen encounter in this case contrasts sharply with the circumstances we examined in Dunaway v. New York, 440 U.S. 200 (1979). In that case, police officers deliberately sought out the suspect at a neighbor's house and, with a show of force, brought the suspect to police headquarters in a police car, placed him in an interrogation room, and questioned him extensively after giving him a Miranda warning. Unlike Dunaway, respondent in the instant case was, after brief questioning, asked to cooperate by accompanying the officers to a room, no more than forty feet away, so that the questioning could proceed out of the view of the general public. Continuing the questioning on the spot under these circumstances may well be

more coercive and intrusive than asking respondent to move to a private room.

The next stage of the Mendenhall analysis is to determine whether, once inside the small room, respondent consented to the search. In this regard, respondent was most cooperative and did not offer even a hint of resistance. He produced the key to one suitcase and opened it himself. After he explained that he did not know the combination to the other suitcase, respondent stated that he had no objection to the officers opening it themselves. Although respondent was not informed that he had a right to refuse to consent to the search, we have held that "proof of knowledge of a right to refuse [is not] the sine qua non of an effective consent to a search." Schneckloth v. Bustamonte, 412 U.S. 218, 234 (1973).

Other than the fact that the room was small, the District Court of Appeal pointed to nothing in the record that would indicate that respondent's consent to the search was involuntary. In this regard, the en banc court relied on the size of the room

to conclude that the consent was the product of an illegal arrest. If respondent consented to accompany the officers to the small room, as he did, it does not follow that he was "arrested" upon entering the room merely because the room itself was small. Logical analysis would focus on whether the size of the room would render the subsequent consent to the search of the luggage involuntary. There is nothing to indicate that respondent's resistance to was overborne by the size of the room. Respondent simply continued to cooperate with the officers as he had from the beginning of the encounter.

During the entire encounter, respondent cooperated with each and every request the officers made. The Florida District Court of Appeal apparently would have it as a rule of law that a drug-courier profile suspect can guarantee suppression of any contraband found on his person or in his luggage simply by cooperating at every step with the investigating officers. Although this rule would be easily applied, it cannot substitute

for the analysis of each step of the encounter undertaken by this Court in Mendenhall.

In a similar fashion, the Florida court fashioned a "bright-line" rule with regard to the profile itself, when it concluded that conformity with the profile, "without more," is insufficient to establish reasonable suspicion that would justify the limited Terry-stop. This Court has never held that or anything like it, and the five members of the Court who voted for the result in Mendenhall, all but explicitly rejected such a rule. Although conformity with certain aspects of the profile does not automatically create "particularized suspicion" to justify an investigatory stop, see Reid v. Georgia, supra, our decision in Mendenhall, made it clear that the officer is entitled to assess the totality of the circumstances in the light of his experience. In order to justify an investigatory stop, the officer need only demonstrate a particularized suspicion that the individual is engaged in wrongdoing, based upon the officer's objective observations and his "consideration of the modes or patterns of

operation of certain kinds of lawbreakers." United States v. Cortez, 449 U.S. at 418.

This process is amenable neither to bright-line rules nor to the Florida court's invocation of the "fallacy of the undistributed middle." If this rule of formal logic were applied to Fourth Amendment jurisprudence generally, the State would have to show that all persons who exhibit the suspicious characteristics are criminals, before any police-citizen encounter could be justified.⁷ But we have held in Cortez that the process of ascertaining particularized suspicion "does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same--and

⁷See ante, at ---n.2. Not only would the concepts of reasonable suspicion and probable cause be invalidated by the "fallacy of the undistributed middle" were that rule of formal logic incorporated as a constitutional principle, but proof of factual guilt in most cases would be rendered impossible.

so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." Id., at 418.

If respondent were now in some other nation, and the State of Florida or the United States were obligated to extradite him in order to bring him back to the United States for trial on the offense with which he is charged in this case, we would have a different case. That foreign nation might well refuse to extradite him because of its feeling that producing marijuana, hashish, or cocaine for example was a vital ingredient of its economy, and it was perfectly willing to allow the drug raised and used locally and smuggled into the United States. But here Florida itself seeks to prosecute, and when its courts so clearly misapply the Constitution of the United States which binds all fifty states into one union, I think its decision suppressing the evidence obtained in this case calls for plenary review by this Court under any reasonable standard which we choose to use in the

administration of our discretionary jurisdiction. I therefore dissent from the denial of certiorari in this case.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

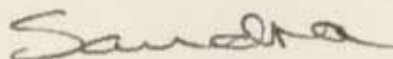
November 12, 1981

No. 80-2146 Florida v. Royer

Dear Bill,

Based on your dissent from denial of certiorari in the referenced case, I am now persuaded to vote to grant cert.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

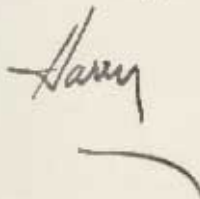
November 12, 1981

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

Dear Bill:

I voted to grant certiorari in this case before, and I adhere to that vote. I have felt that the Florida District Court of Appeal has been flouting this Court's decisions and creating a real problem in drug enforcement in the Miami area.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harry", with a long horizontal flourish extending to the right.

Justice Rehnquist

cc: The Conference

November 12, 1981

80-2146 Florida v. Royer

Dear Bill:

As this case involves an "arrest" rather than a seizure, I have been hesitant to join you in voting to grant.

Your opinion persuades me, however, that the practical effect will be the same: the police may not rely upon the "drug profile" to stop drug couriers even when reasonable suspicion justifies it.

Accordingly, I join your dissent, and also will vote to grant.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

LFP/djb 8/18/82

Memorandum for the File

Subject: 80-2416, Florida v. Royer

This is the Florida "airport search case" that we were uncertain about taking, and after reading the briefs I rather think it may have been a mistake to grant it.

In brief summary, the facts (as stated in the en banc opinion of the Florida Court of Appeals) were as follows: Two State Narcotics Officers (Johnson and one other) spotted respondent in the Miami airport, and made the following observations:

Johnson said that these were the facts that

- (a) the defendant was carrying American Tourister baggage of a type which "seemed to be standard brand for marijuana smuggling;" (b) he was "nervous in appearance, looking around at other persons as though he might be looking for possible police officers;" (c) he paid for the ticket to New York in cash (and therefore without the necessity of showing identification from a roll of small-denomination bills; and (d) rather than filling out a full name, address, and phone number on the baggage tags furnished by National, he wrote only the words "Holt" and LaGuardia" on each of them.

Unusual

As the State prevailed in the trial court, the Court of Appeals accepted Johnson's view of the facts. The agents believed that respondent's conduct was consistent with the "drug courier profile", developed by Federal officers and generally relied upon.

Accordingly the agents thought there was "reasonable suspicion", they stopped respondent as he left the ticket counter, identified themselves, and asked if respondent had a moment to talk. Respondent replied affirmatively, and also agreed to show his airline ticket. The ticket bore the name "Holt", but when he also consented to show his driver's license, the name thereon was "Mark Royer". Respondent explained the discrepancy by saying that a friend had made the reservation in the name of "Holt".

The officers then told respondent that they were Narcotics Investigators, and that they suspected respondent was transporting narcotics. Respondent agreed to accompany the officers some 40 feet to a room in the Concourse used as the stewardesses lounge. The officers also used a "large storage closet" (with a table and several chairs) to which they took suspects. Without any prior consent, the officers retrieved the suitcases, and with respondent's consent opened one of them with a key provided. The second one had

a combination, respondent denied that he knew the combination, but agreed to its being forced open. It contained 60 pounds of marijuana. Respondent thereupon was arrested.

At the suppression hearing, Johnson testified as above stated. Respondent claimed that he had agreed to talk, to show his ticket and driver's license, and had accompanied the officers to the office only because he felt he had no choice. They were "police officers", and "I felt that's what I had to do".

Trial Court

The trial court denied the motion to suppress, stating:

"[T]he Court believes that the consent was freely and voluntarily given. By the same token, I think under circumstances such as this where the police officers are in the airport and are surveilling, as testified to by the officer, with a specific profile that they are following, that the officer doesn't have the time to run out and get a search warrant because the plane is going to take off. If there is going to be anything occurring it's going to occur long before they can take any type of action. So it's a denial on dual grounds. Might as well get it tested whether it's reasonable or unreasonable because, I assume you are taking an appeal."

Florida Court of Appeals *(en banc)*

A panel, one dissent, of the Florida District Court of Appeals affirmed. But on rehearing en banc, the panel decision was reversed, and the charges against respondent were ordered dismissed.

The Court held (i) that respondent had been unlawfully restrained (seized) within the interrogation room, and that his "silent consent" to the search of his suitcase was involuntary; (ii) that there was no probable cause, and "and for all practical purposes, respondent had been placed under arrest when the alleged consent was given"; (iii) the consent was "tainted and invalid"; and (iv) the claim of exigent circumstances was irrelevant because this doctrine applies only to excuse the absence of a warrant, and does not justify arrest without probable cause.

True

It is particularly relevant to note the following statement by the Court of Appeals:

"Since we hold that probable cause was required in this case and did not exist, we need not decide whether on this ground there was founded suspicion to justify stopping respondent" (Supplemental Appendix, p. 43).

State's Argument

The State's principal argument is that ^{when} ~~while~~ police act in "good faith" - as seems to be conceded in this case - the exclusionary rule is not applicable. It relies heavily on Byron's view that a "good faith exception" should be adopted, a view Byron expressed at some length in his separate opinion in Stone v. Powell. In this case, Johnson testified that the real deterrent against misconduct (unlawful arrest) by police officers is the ever present threat of a civil suit for damages, not the exclusionary rule.

The State also relies on Justice Stewart's view in Mendenhall that a "stop" is valid when objectively, a reasonable person could conclude that he was free to walk away." Finally, the State argues that respondent freely consented to the search.

I note here that respondent, in his brief, dismisses the "good faith" issue as not having been presented below. The State has not yet filed a reply brief, but the opinion below did not address this issue.

SG's Arguments

In an amicus brief, the SG emphasizes the importance of the case and advances alternative arguments. On the basis of a preliminary reading, it is ^{not} entirely clear to me which is the SG's principal argument.

His basic argument appears to be that the Florida court failed to distinguish seizures that ^{are} subject to the Fourth Amendment from "consensual police - citizen contacts that do not implicate the Fourth Amendment at all". Putting it differently, "an arrest requiring probable cause is to be distinguished from an investigative detention by reference to the purpose and duration of the detention, as well as the procedures which accompany it." (p. 11)

Thus, as I understand it, the SG is agreeing with my analysis in Mendenhall where I concluded that there was a "seizure" (as there was no probable cause) but that for purposes of investigation there may be a brief seizure on the basis of reasonable suspicion.

** Mich. v. Summers conforms
validity of a ^{such} seizure
on reasonable suspicion*

The SG made an alternative argument that there was no unlawful seizure at all, relying on Justice Stewart's opinion in Mendenhall to the effect that even without reasonable suspicion, police may stop a person for a brief interrogation, and that following such interrogation - in this case - there was consent to go to the private room, and consent thereafter to open the suitcase (as in Mendenhall). See SG's brief p. 18 et seq., particularly p. 21, quoting Justice Stewart.

* * *

Although I am not at rest in this case, I am inclined to think - as I did in Mendenhall - that there was a seizure but that there was reasonable suspicion justifying it; and thereafter, there was consent. * See my opinion in Mendenhall (446 U.S. at 560 et seq.). I relied on Terry v. Ohio, United States v. Brignoni-Ponce, arguing that "a reasonable investigative stop does not offend the Fourth Amendment", and that reasonableness turns on the facts of each case. Our cases - as I mentioned - emphasize the public

* But probably not to the search

~~SG~~ Adams

interest served by the seizure, the nature and scope of the intrusion, and the objective facts upon which the law enforcement officers relied in light of their knowledge and expertise.

I must agree that the court's per curiam in Reid v. Georgia (decided subsequently to ~~the~~ Mendenhall, and in which I dissented) lends support to respondent's position. On the other hand, a

great deal of language in Justice Stevens' more recent opinion in Michigan v. Summers, decided June 22, 1981 (101 S.Ct. 2567) *is relevant.*

you/ In that case, the Court held that where there was a warrant to search a residence, police could detain a person who was descending the front steps until they had searched the premises, ~~there~~ In the course of his opinion, Justice Stevens emphasized at length - citing Dunaway v. New York, 422 U.S. 200, that "some seizures are significantly less intrusive than an arrest", that "special enforcement problems" such as in Brignoni-Ponce may justify the brief stopping of vehicles near the border. Justice Stevens then said:

"These cases recognize that some seizures admittedly covered by the Fourth Amendment constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause, so long as police have an articulable basis for suspecting criminal activity. In these cases, as in Dunaway, the Court was applying the ultimate standard of reasonableness embodied in the Fourth Amendment. They are consistent with the general rule that every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause. But they demonstrate that the exception for limited intrusions that may be justified by special law enforcement interests is not confined to the momentary, on-the-street detention accompanied by a frisk for weapons involved in Terry and Adams. Therefore, in order to decide whether this case is controlled by the general rule, it is necessary to examine both the character of the official intrusion and its justification."

Reviewed 9/16 Helpful

mfs 09/03/82 Mike's view:

1. Articulable suspicion. Objective facts (p 18) ~~were~~ justified a stop for questioning (a "seizure" short of arrest) as I would have held in Mendenhall & Reid. But "profile" alone insufficient.

2. Arrest. Resp. reasonably could not have thought he could "walk-away" when he consented to go to ~~private~~ ~~room~~ did not object to search. ^{Therefore that there was a "seizure" long enough to constitute arrest (Drummond)} The Agents (State - not DEA) had taken Resp's ticket and also had picked up her baggage & it was in officer possession. This distinguishes Mendenhall (p 13) One doesn't walk away when officers have tickets & luggage. No probable cause of this arrest.

BENCH MEMORANDUM

No. 80-2146

Florida v. Royer

Michael F. Sturley (Airport "search" case) September 3, 1982

3. Exclusionary Rule. Whatever Fed. Court. requires (p 21), Questions Presented the Fact/Issue applied Fla Law (p 22)

(1) Was there an "arrest," or a "seizure" short of an arrest, on the facts of the present case?

(2) Does behavior consistent with the "drug courier profile" constitute probable cause to justify an arrest, or articulable suspicion sufficient to justify a more limited seizure?

See DEA Manual - p 15

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I. BackgroundA. The Drug Courier Profile

During the early 1970s, when air piracy was a major problem, the Federal Aviation Administration and the commercial airlines developed a list of characteristics common to most skyjackers, and used this "profile" to identify potential skyjackers before they boarded the plane.¹ In 1974, a Detroit DEA agent developed a similar list of characteristics common to most drug couriers arrested in the Detroit airport. Versions of this "drug courier profile" are now used in airports throughout the country to help identify passengers who might be likely to be carrying drugs. Items on a list might include, for example, arrival or departure from or to a narcotics "source" or "use" city, unusual nervousness, carrying little or no baggage, purchasing airline tickets with cash, and making a telephone call immediately after deplaning.

When police discover a person fulfilling several of the criteria on the list, they might decide to approach him/her and ask to see his/her airline ticket and some other identification. Their suspensions will be reinforced if the passenger is traveling under an alias, has an unusual itinerary (such as a one-way ticket, or a rapid turnaround in a distant city), or has not checked any baggage. In such cases, the police might request

¹See, e.g., United States v. Bell, 464 F.2d 667, 668-70 (CA2), cert. denied, 409 U.S. 991 (1972); United States v. Lopez, 328 F. Supp. 1077, 1084, 1086 (E.D.N.Y. 1971).

permission to search the passenger. In most cases, the passenger consents to the search, and many searches reveal illegal drugs.

B. Facts

no explicit findings, but primary facts undisputed.

The TC failed to make any explicit factual findings in the present case. Since the state prevailed at trial, the appellate judges relied on the state's evidence in the record for their statements of the facts. The primary facts are essentially undisputed.² Secondary facts may become relevant, however, depending on the Court's approach to the case, and the lack of factual findings may become troublesome. What follows is a summary of the undisputed facts.

Two Dade County plainclothes detectives, Officers Johnson and Magdalena, were on duty at the Miami airport looking for drug couriers. They first observed resp as he crossed the concourse toward the National Airlines ticket counter with two

① heavily laden suitcases manufactured by American Tourister. He was ② "nervous in appearance, looking around at other persons as though he might be looking for possibly police officers." Jt App, at 29A (quoted by CA en banc, 389 So.2d, at 1016). Johnson declared he could distinguish resp's behavior from the type of

The undisputed facts ↓

²There were only two witnesses at the suppression hearing: the defendant and one of the arresting officers. Their testimony conflicts on only one, minor point. See 389 So.2d, at 1009 n.3 (CA panel majority). (The opinions of the lower courts are reproduced in the petn app in typescript, but the typing is poor, and the opinions are difficult to read. I have therefore followed the parties' practice and cited to the published version of Ct. opinion. I attach a copy for your convenience.)

nervousness shown by "white knuckle flyers." Resp ⁸paid for his ticket to New York³ in cash from a roll of small denomination bills. On the adhesive baggage tags furnished by the airline, he ⁴wrote only "Holt" and "LaGuardia" (his destination) rather than a full name, address, and telephone number. These actions were consistent with the officers' drug courier profile.

The officers approached resp as he left the ticket counter, identified themselves, and asked if he had a moment to talk. He replied affirmatively. They asked to see his airline ticket, and he showed it to them. The ticket was in the name "Holt." They asked for further identification, and he produced a driver's license in the name "Mark Royer." To explain the discrepancy, he claimed that a friend had made the airline reservation. The officers told him that they were narcotics investigators and that they suspected him of carrying narcotics. *One objective fact*

At this point, the officers asked resp to accompany them to a small room about forty feet from where they had approached him. They did not inform him that he was free to leave, although Johnson admitted that they then had no probable cause to justify an arrest. Resp nevertheless went with them. Using the baggage claim checks attached to the ticket, Johnson recovered resp's baggage from the airline without his consent.⁴ The officers *Could have walked away at this point*

³The officers were particularly concerned with a National flight to Los Angeles. It seems that an LA destination would have fit the profile, but it is not clear if NY would, as well.

⁴The officers may have recovered the bags after resp consented to the search, but this is unclear. *←*

asked to search the bags, but did not specifically inform him that he had the right to refuse their request. He consented,^{to search} providing the key to one of the bags and allowing the other to be forced open. They discovered sixty-five pounds⁴ of marijuana in Heavy! the two bags, and officially arrested him.

C. Decisions Below

(1) The Trial Court. The TC, ruling from the bench, denied resp's motion to suppress the marijuana.⁵ It held that resp's "consent was freely and voluntarily given," Jt App, at 115A, despite resp's testimony that he had consented to the various police requests because "[t]hey were police officers and I thought I had to," e.g., Jt App, at 79A, 80A, 81A (quoted by CA panel, 389 So.2d, at 1009). Alternatively, the TC appeared to rely on an exigent circumstances exception, declaring "that the officer doesn't have the time to run out and get a search warrant because the plane is going to take off." Jt App, at 115A.

(2) The District Court of Appeal Panel. A divided panel of the CA affirmed, holding that resp's consent had been voluntary. The majority concluded that resp had not been in custody, and that the officers had not coerced him. 389 So.2d, at 1010. The statement that they suspected him of carrying narcotics was not a threat but an explanation. Ibid. In any event, the fact that resp's behavior conformed to the profile gave the police

⁵The TC's decision is reproduced in a footnote to the majority opinion of the CA panel. 389 So.2d, at 1008 n.1.

probable cause to arrest him. Id., at 1011-12.

The majority agreed with the TC's alternative rationale, holding that a warrantless search of the luggage was justified without resp's consent. The profile evidence provided probable cause, and his impending departure provided exigent circumstances. Id., at 1012. United States v. Chadwick, 433 U.S. 1 (1977), was distinguished on the grounds that here "the defendant's suitcases were immediately associated with him" because "he was in constructive possession thereof." 389 So.2d, at 1013. *Panel of Fla. 1st DCA affirm trial court's denial of suppression motion*

Judge Schwartz dissented, arguing that (a) the officers effectively took resp into custody, thus placing him under arrest for purposes of constitutional analysis; (b) the arrest was illegal because the officers, as Johnson admitted, did not have probable cause justifying an arrest;⁶ and (c) the consent was invalid since it was given while resp was illegally under arrest. Id., at 1014-15. He concluded that exigent circumstances could justify the lack of a warrant, but could not take the place of probable cause. Id., at 1015.

(3) The District Court of Appeal En Banc. A unanimous ⁷En banc CA en banc reversed, holding that there had been an arrest without probable cause, and this tainted resp's consent. The CA rea- *reversed, holding there had been an arrest*

⁶The dissent left open the possibility that the officers may have been within their rights to "encounter" resp, or that they may have had the "founded suspicion" to justify a Terry stop. 389 So.2d, at 1014.

⁷The panel majority had consisted of two senior judges who were not entitled to sit on the en banc CA. 389 So.2d, at 1015 n.1.

soned that there had been an arrest because resp "found himself in a small enclosed area being confronted by two police officers," he knew he was a suspect in a narcotics investigation, and his plane ticket and luggage had been taken away from him. Under such circumstances, the CA concluded it was reasonable for resp to believe that he was not free to leave. Id., at 1018.

This is what interests me
The CA accepted Johnson's concession that the officers had not had probable cause to make an arrest. The CA went beyond this, however, saying that "mere similarity with the contents of the drug courier profile is insufficient even to constitute the articulable suspicion required to justify a Terry stop." Id., at 1019. Relying on state authority, the CA completed its analysis with the conclusion that the illegal arrest necessarily tainted resp's consent. Id., at 1019-20. *State law*

The CA, following the panel dissent, dismissed the exigent circumstances argument. It held that exigent circumstances could justify the lack of a warrant, but could not take the place of probable cause. Id., at 1020.

My opinion
Judge Hubbard concurred separately. He agreed that profile evidence, without more, could not constitute probable cause for an arrest. Ibid. He differed from the majority in arguing that profile evidence could constitute grounds for an investigative stop. ✓ Citing your opinion in United States v. Mendenhall, 446 U.S., at 560-66, he contended that the proper analysis required a balancing of (i) the public interest served by the stop; (ii) the nature and scope of the intrusion; and (iii) the objective facts upon which the officer relied. Id., at 1021-22. He

Make sense

felt that the public interest was very high, id., at 1023-24, and that the intrusion was generally very minor, id., at 1024. Thus each case would "turn on the nature of the profile behavior ... and the court's perception of how objectively suspicious the behavior in question seems to be." Id., at 1022.

Judge Barkdull also concurred separately. He distinguished Mendenhall on the grounds that the officers did not return resp's plane ticket, and did not inform him that he could decline to consent. Id., at 1026.

II. Discussion

A. Exigent Circumstances

Not applicable. There is no presence of probable cause to search the bags did not justify search on the spot. Saunders v. Ark
For convenience, I will first dispose of the TC's alternative rationale for admitting the seized marijuana. Neither the state nor the amici stresses an exigent circumstances argument,⁸ but the CA panel endorsed the TC's reasoning, so I will briefly deal with it. To focus on the exigent circumstances aspect of the argument, I will assume for the moment that the officers had probable cause to search the bags without resp's consent. The validity of this assumption will be discussed below in part II.C.

The governing principles were set out in Arkansas v. Sanders, 442 U.S. 753 (1979), and United States v. Chadwick, 433 U.S. 1 (1977). In both cases, the police had probable cause to

⁸The state devotes a sentence (p. 46) to an exigent circumstances argument, citing two pre-Chadwick CA cases and two pre-Chadwick law journal notes.

believe that certain luggage contained marijuana, so they arrested the owners and seized the luggage. It would have been possible to secure the luggage pending receipt of a search warrant. Moreover, there was no reason to believe that the bags were dangerous, or that the evidence inside would lose its value if not discovered immediately. The police in each case nevertheless searched the luggage without a warrant. This Court held that both searches violated the Fourth Amendment.

The present case is indistinguishable. Although resp would have departed with the luggage if it had not been seized, that exigency (if such it is⁹) justifies at most a seizure ^{of the bags - not the search}. Once Johnson seized resp's bags, they were securely within his control, and no further exigency justified an immediate search. Absent resp's consent, the proper course would have been to wait for a warrant.

The CA panel ignored Sanders, but attempted to distinguish Chadwick on the grounds that the bags were "immediately associated with" resp. I find this distinction unpersuasive. During the relevant period, resp had no independent access to the bags. They were not even in his presence until Johnson brought

⁹The extent of the "exigency" is questionable. Unlike Sanders and Chadwick, where the suspects were departing in automobiles, resp here was about to take a three-hour flight on a scheduled airline. The officers knew he would have no access to his luggage until he reached the baggage claim area at LaGuardia. The airport smuggling details around the country are in regular contact with each other. See, e.g., United States v. Wright, 577 F.2d 378, 379 (CA6 1978). A DEA agent could presumably have met resp in New York with a search warrant.

them there. The CA panel's suggestion that "he was in constructive possession" of the bags (through the claim-checks) is also meritless: Johnson had taken the ticket with the claim-checks stapled to it, and had not returned it. But even if resp had retained the claim-checks, it would make little difference. He would still have had less access to his bags than did the resps in Chadwick prior to their arrest.

B. Arrest, Seizure, or Consensual Encounter

The first step in resp's analysis of the case requires a characterization of the contact between resp and the police. His argument depends on a finding that the intrusion was greater than could be justified by the officers' information at the time of the contact. In particular, he argues that the contact was an "arrest" which was not supported by "probable cause." He could similarly argue that the contact was a "seizure" which was not supported by "articulable suspicion."

(1) The Legal Categories. The Court has clearly held that a confinement short of a formal arrest may be "indistinguishable from a traditional arrest." Dunaway v. New York, 442 U.S. 200, 212 (1979). In Dunaway, for example, the police took a suspect into custody, drove him to police headquarters, gave him the Miranda warnings, and questioned him for an hour. Although he was not formally arrested, the Court found the confinement to be the functional equivalent of a formal arrest and held that it must be supported by probable cause.

** But there one was asked to go to station house*

True

The Court has also recognized that a person who has not been "arrested," because the intrusion is much less severe than a traditional arrest, may nevertheless be "seized" within the meaning of the Fourth Amendment. "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 U.S. 1, 16 (1968). Although a "seizure" does not require probable cause, it does require "an articulable basis for suspecting criminal activity." To date, this exception to the traditional Fourth Amendment "probable cause" requirement has been narrowly construed.¹⁰

Finally, "not all personal intercourse between policemen and citizens involves 'seizure' of persons." Terry, supra, 392 U.S., at 19 n.16. Thus some contacts between police and citizens do not implicate the Fourth Amendment. As JUSTICE WHITE commented in Terry, "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." 392 U.S., at 34 (WHITE, J., concurring). He went on to explain, "[o]f course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest" Ibid. The distinction be-

¹⁰See Michigan v. Summers, 452 U.S. 692 (1981) (detention of home-owner while home searched pursuant to warrant); United States v. Cortez, 449 U.S. 411 (1981) (brief immigration check near border); Pennsylvania v. Mimms, 434 U.S. 106 (1977) (order to leave car when car lawfully stopped, and weapons frisk on basis of reasonable suspicion); United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (investigative stop near border lasting less than a minute for "a brief question or two"); Adams v. Williams, 407 U.S. 143 (1972) (weapons "frisk" on basis of reasonable suspicion); Terry, supra (same).

*My view in
Reid*

tween a Fourth Amendment seizure and a consensual encounter rests on whether, "'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" Reid v. Georgia, 448 U.S. 438, 442 (1980) (opinion of POWELL, J., concurring) (quoting United States v. Mendenhall, supra, 446 U.S., at 554 (opinion of Stewart, J.)).

(2) The Facts Here. The initial contact between resp and the police occurred when Johnson asked him if he had a moment to talk. At that point, no "seizure" had taken place. The easiest resolution of this case would be a finding that everything else happened with resp's consent. That is not what the TC found, however, and the evidence on the record does not compel such a conclusion. If the case is remanded, of course, such a finding remains open to the TC.

Assuming that resp did not voluntarily consent to what followed, the next step is to determine whether a reasonable person in resp's position would have felt free to leave. I think not. Although you did not reach the seizure issue in Mendenhall, you did say that the question was "extremely close." 446 U.S., at 560 n.1 (Opinion of POWELL, J., concurring). Here the indicia of seizure are significantly stronger. As in Mendenhall, resp accompanied the officers when requested to do so, apparently without verbal response, after he had been asked to show his plane ticket and driver's license. As in Mendenhall, the officers wore no uniforms, made no threats, and displayed no weapons. And as in Mendenhall, resp was not informed that he was free to refuse to cooperate.

*But
9
assumed
a seizure**Could
argue
that
after
Resp
agreed
to talk,
all
subsequent
action
was
consented
to.**Open
on
Remand*

Differences from Mendenhall:

^{1st} (1) The first significant difference is that Mendenhall's ticket and license had been returned to her immediately, before she was asked to accompany the DEA agents. The Court specifically relies on this fact, 446 U.S., at 558, and the dissent singles out the fact that the agents took her ticket and license "for a time" as "an objective factor[]" that would tend to support a 'seizure' finding,"¹¹ id., at 570 & n.3 (WHITE, J., dissenting). Here it is clear that the ticket was not returned to resp, and it appears that the license was simply placed with resp's other things after he emptied his pockets.¹²

ticket not returned to Resp

^{2nd} (2) The second significant difference is that resp's luggage was in the officers' possession, while Mendenhall was apparently travelling without luggage. A reasonable person would doubt his freedom to leave when the police are holding his bags. Even if he did consider himself free to request the return of his bags, it is unclear what he could have done with them. Most airlines object when a passenger, having already checked two bags, attempts to check two bags a second time.

9m Mendenhall 9 arrested a seizure

Yes

In sum, I conclude that there was a "seizure," probably when the officers, without returning resp's ticket and license,

But Resp consented

¹¹As JUSTICE WHITE noted, "[i]t is doubtful that any reasonable person about to board a plane would feel free to leave when law enforcement officers have her plane ticket." 446 U.S., at 570 n.3 (White, J., dissenting).

Yes

¹²The state suggests that resp was not required to empty his pockets until after his formal arrest. If this is true, the license was apparently not returned in time to make any difference on the seizure question. If resp had been required to empty his pockets earlier, on the other hand, that would be another indication that he had been seized before the formal arrest.

Mike Thacker there was a "seizure" but unusual as to precisely when it occurred

or informing him of his right to refuse, asked resp to accompany them to the office. Perhaps, though, the seizure occurred after they had obtained his luggage. If you agree that there was a seizure, however, it makes no difference which of these two points is selected as the time at which it was accomplished.¹³

I think the harder question is whether the seizure here was an "arrest." Prior to Michigan v. Summers, supra, I would have agreed with the CA without hesitation and concluded that

Summers
A had been detained while his residence was searched
 this case did present an arrest. Before Summers, the Court had limited investigative stops to intrusions taking less than a minute. In Summers, however, the Court upheld a much more intrusive detention as a "seizure" short of an "arrest," primarily because the detention was much less intrusive than the seizure in Dunaway. Certainly on the spectrum from formal arrest to weapons frisk, this case falls nearer the latter. But as the Dunaway Court stressed, the general principle is that a seizure requires probable cause (i.e., is an arrest); the investigative stop based on reasonable suspicion is the narrow exception. If the exception becomes too broad, it will swallow the general principle. This case is near the line, but I would still be inclined to put it on the "arrest" side. *Ar of when?*

Terms stops often take more than a minute

Arrest

In making this recommendation, I do not worry that it

¹³Nothing of relevant legal significance took place in the interim. Resp did not give his consent to the search then, and the officers learned nothing new that would help justify a seizure. The move from concourse to office may be relevant, but only in determining that a seizure took place.

DEA Manual

would hobble the legitimate investigative activities of airport smuggling details that rely on the drug courier profile. The DEA Manual¹⁴ instructs the police in block capitals, "ALWAYS ADVISE THE SUSPECT THAT HE HAS A RIGHT TO REFUSE TO CONSENT TO A SEARCH." Id., at 61. It is only slightly less emphatic on tickets and identification: "Return ticket and/or ID immediately." Id., at 129 (emphasis in original). If the officers here had followed these instructions by returning resp's ticket and license immediately, and if they had not recovered his luggage until he had given his permission, then this would be essentially the same close case as Mendenhall. And if they had also informed him that they sought his voluntary cooperation, which he had the right to refuse, it would not even be a close case. The DEA, in preparing the Manual, obviously finds these constraints reasonable. I see no reason why the Court should not endorse them. ^{DEA requires - *} ^{if meets} a suspect's holding his ticket and knowing his rights would be enough to hobble the procedure, the procedure relies not on voluntary cooperation but on fear and ignorance.

C. Probable Cause or Articulable Suspicion

(1) The Profile Per Se. There has been considerable controversy about the drug courier profile, most of it on the assumption that the profile is designed to objectively predict |

¹⁴Legal Problems in Airport Interceptions of Domestic Drug Couriers (U.S. Dept. of Justice, Drug Enforcement Administration, 1980) [cited herein, and in SG's amicus brief, as "DEA Manual"].

* I'd not 'endorse' an unbending Rule. Facts vary widely.

who is likely to be a drug courier.¹⁵ The assumption is invalid, however, for the profile neither is nor is intended to be anything more than an investigative tool.

As a practical matter, the drug courier profile is highly subjective. One district judge described it as "chameleon-like," observing that "it seems to change itself to fit the facts of each case." United States v. Westerbann-Martinez, 435 F. Supp. 690, 698 (E.D.N.Y. 1977). In United States v. Chamblis, 425 F. Supp. 1330, 1333 (E.D. Mich. 1977), a DEA agent "testified that the profile in a particular case consists of anything that arouses his suspicions."

A few comparisons illustrate these concerns. In Mendenhall, the first three factors on which the agents relied to determine that the suspect fit the profile were (1) her arrival from Los Angeles, a "source" city; (2) the fact that she was the last to leave the plane, and appeared very nervous; and (3) her failure to have any baggage. 446 U.S., at 547 n.1. On the first factor, the court in United States v. Andrews, 600 F.2d 563, 566-67 (CA6), cert. denied, 444 U.S. 878 (1979), commented, "our experience with DEA agent testimony ... makes us wonder whether there exists any city in the country which a DEA agent will not

¹⁵See, e.g., Goldstein & Hirschhorn, Drug Courier Profiles (A Markonnan Nightmare) (Nat'l Association of Criminal Defense Lawyers, Criminal Defense Seminar, 1981); Bodine, Selecting Drug 'Suspects': Use of Courier Profile At U.S. Airports Lands DEA in Controversy, Nat'l L.J., July 27, 1981, at 1; Costantino, Drug Courier Profiles and Airport Stops: Is the Sky the Limit?, 3 Western New England L. Rev. 175 (1980).

characterize as either a major narcotics distribution center or a city through which drug couriers pass on their way to a major narcotics distribution center."¹⁶

On the second factor, United States v. Herbst, 641 F.2d 1161, 1164 (CA5), cert. denied, 102 S.Ct. 292 (1981), is instructive. There the agents relied on the fact that the suspect "was one of the first passengers to deplane." Even nervousness, which is inherently subjective, is not part of every profile. In United States v. Himmelwright, 551 F.2d 991, 992 n.1 (CA5), cert. denied, 434 U.S. 902 (1977) (border search), an agent's suspicions were aroused because the suspect was "extremely calm."

And on the third factor, the present case is noteworthy. Resp was an object of suspicion not because he had no baggage, or very little baggage, but because he was "carrying two apparently heavily-laden suitcases." 389 So.2d, at 1016.

65 lbs
This subjectivity should not be surprising, for the profile is not designed to be anything more than an investigative tool. The DEA analogizes agents identifying couriers with a profile to other professionals making professional decisions with the aid of "an informal mental checklist" of relevant factors:

[A doctor], for example, in making a diagnosis, must compare the patient's symptoms to a mental checklist of characteristics which he knows indicate certain diseases. He probably learned that checklist originally in medical school and has modified it over the years

¹⁶Cf. United States v. Pulvano, 629 F.2d 1151, 1155 n.1 (CA5 1980) ("A review of the cases in which this profile has been used, as well as the direct testimony of [a DEA agent], convinces us of the tragic fact that every major population center in this country has become a home for drug traffickers.").

*Factors constituting
"artificial suspicion"*

from his own experience and that of fellow doctors

DEA Manual, at 149. The analogy strikes me as relevant. A doctor cannot decide to operate solely on the basis of a few symptoms unless those symptoms are highly probative, but he can use a list of symptoms as an aid to exercising his independent professional judgment. The legitimacy of the decision depends not on the existence of a few symptoms, but on the quality of the doctor's judgment in the overall circumstances. The same is true for seizures based on "profile evidence." As the DEA reminds its agents, "Reasonable Suspicion will be established by what is in your head, not what may be written on paper somewhere." Id., at 152. There is nothing wrong with using a profile, but its limitations must be recognized--both by the agents in the field and by the courts. Whether there was probable cause or articulable suspicion should be determined using the traditional analysis, regardless of what legitimate investigative tools the officers used to develop their suspicions.

*Just before
a "stop"*

(2) The Facts Here. At the time resp was seized, Johnson and Magdalena knew the following: (1) Resp was nervous, apparently seeking to avoid detection. (2) Resp was travelling from Miami to New York on a one-way ticket purchased with cash. (3) Resp had two heavily laden American Tourister suitcases. (4) Resp was travelling under an alias. Not only was his ticket in the name "Holt," but he had identified his luggage with the name "Holt." (5) Resp did not put an address or telephone number on his luggage. It would have been better, of course, if the TC had found that these circumstances either did or did not consti-

*a
key
fact
with
me*

*Factors (4) & (5) create
reasonable suspicion
(next pg)*

*Agts had reasonable
suspicion*

*Inclined
to agree*

tute articulable suspicion or probable cause. On the basis of the record, though, I feel that the officers did not have probable cause (a fact that Johnson conceded, Jt app, at 57A), but that they did have reasonable suspicion.

Standing alone, none of the factors is overwhelming, but most have some probabative value. I think an experienced officer can tell the difference between "white knuckle flyer" nervousness and wrongdoer nervousness, but the courts should require him to articulate his specific findings in each case. That seems to have been done here.¹⁷ The second factor strikes me as less important. It is not unusual for a student attending college in New York to buy a one-way ticket to New York City near the end of the Christmas vacation. Paying with cash is not surprising. Many college students do not have the credit rating to justify a credit card. Furthermore, the Miami-New York airfare was not very high at the time. The third factor also fails to impress me. Whenever I went back to college after a vacation, my bags were packed to the limit, and I was not alone in this regard. I am also not unusual in my use of American Tourister luggage. The fourth factor is the most persuasive for me. It was clear that resp was trying to hide something from someone. The fifth factor also carries some weight. While many people do not wish to display their address and telephone number, they at least have bag-

65 lbs?

¹⁷Johnson testified to his experience, and explained that resp was nervously looking around the area as though trying to spot policemen. "White knuckle flyers" generally fidget and talk to one another uneasily. Jt app, at 30A-31A.

gage tags that allow the information to be obtained if necessary. Resp obviously did not want his ownership of the bags established if they fell into official hands.

My biggest trouble with this evidence is its lack of specificity. Resp was doing something that he did not want to publicize, but it is not clear that he was doing anything illegal, and even less clear that he was carrying narcotics. In 1978 (the most recent year for which statistics are provided), the LaGuardia Airport Unit made 43 searches. On 16 occasions the unit seized drugs, but on 13 occasions they discovered illegal aliens. DEA Manual, at 2.¹⁸ Drug-running is not the only activity that travelers wish to keep secret. The stereotypical adulterer using a commercial airline to travel to a distant rendezvous would fit the drug courier profile perfectly.

The lack of specificity convinces me that Johnson was correct to admit that he had no probable cause to arrest resp. Articulate suspicion is a closer question. In Mendenhall, you analyzed the problem using a three-part test which examined

(i) the public interest served by the seizure, (ii) the nature and scope of the intrusion, and (iii) the objective facts upon which the law enforcement officer relied in light of his knowledge and expertise.

446 U.S., at 561. Here the first two factors are essentially the same as in Mendenhall and Reid v. Georgia, supra, so in comparing

¹⁸Cf. United States v. Bowles, 625 F.2d 526, 534 n.10 (CA5 1980) (22% of searches at Atlanta Airport during 7 months in 1977 produced evidence of criminal activity other than transporting narcotics).

the cases the third factor is determinative. The officers here had less basis for suspicion than the agents in Mendenhall. Resp was no more nervous than Mendenhall, his itinerary was less suspicious, his heavy luggage was less suspicious than her lack of luggage, and they both travelled under an alias. On the other hand, they probably had more basis for suspicion than the agents in Reid. There the suspects were apparently travelling under their own names on tickets purchased with a credit card. Their itinerary and airport behavior, however, were more suspicious than resp's. In the end this is a judgment call. I would say that the officers here had reasonable suspicion. *yes*

D. The Exclusionary Rule

If there was an "arrest" without probable cause, or a "seizure" without articulable suspicion, then it is necessary to consider the exclusionary rule. I am inclined to think that the Constitution does not require exclusion of the marijuana simply because resp's consent to search his bags was given while he was in illegal custody. Suppression may be required when the custody does in fact influence the consent, but the court below applied what amounts to a per se rule. Although such a rule makes sense when the illegal arrest is the justification for the search, that is not the case here. Even a valid arrest, standing alone, could not have justified searching resp's locked suitcases. Here the CA did not give the state the opportunity to prove that the consent was voluntary in the totality of the circumstances despite the illegality of the arrest. I do not think that Brown v. Illi-

nois, 422 U.S. 590 (1975), and Wong Sun v. United States, 371 U.S. 471 (1963), or the deterrent purpose of the exclusionary rule, requires such a result.

This may, however, be strictly a state constitutional issue. Unlike the federal exclusionary rule, the Florida equivalent is explicit in Article I, §12 of the state constitution. *Fla. Const.*

While the Florida courts accept the federal standards for determining whether a search, seizure, or arrest is reasonable, Florida v. Hetland, 366 So.2d 831 (Fla. App. 1979), aff'd per curiam, 387 So.2d 963 (Fla. 1980), their exclusionary rule appears to be more limited. In applying the exclusionary rule, the court below relied directly on Florida cases, and the courts in those cases, *Fla. cases relied on* in turn, relied on earlier Florida cases. Since this looks like a strictly state question, I do not discuss the federal issue in detail here. If you would find it helpful, however, I will be happy to do so.

The state argues extensively for a good faith exception to the exclusionary rule. Resp argues that this was not raised below, so it may not be available here. In any event, it seems that the Florida constitution would not permit such a result, even if this Court relaxed the federal rule. Once again, I do not discuss this issue in detail, but will be happy to do so if you would find it helpful.¹⁹ *no*

¹⁹In tying up loose ends, please note that I have also not dealt with resp's mootness argument. It looks like a narrow issue, but I would like to see the state's reply before discussing it.

III. Conclusion*Good summary
of Mike's views.*

This is a complicated case, with many of the complications arising out of the TC's failure to make explicit findings on issues that may prove relevant. To resolve the case, it is necessary to make two close judgment calls that may end up being closely bound to these facts. On the first, I conclude there was at least a "seizure," and that seizure might be an "arrest." On the second, I conclude the officers did not have probable cause to make an arrest, but they did have articulable suspicion sufficient to justify a limited seizure. If the case is to have any broad precedential value, it will probably be in its treatment of the drug courier profile. On that issue, I recommend that the Court treat it as a legitimate investigative tool, but evaluate the agents' independent judgments in the traditional way. The extreme approach of the en banc CA is inappropriate, and the opposite extreme of the CA panel is even worse. In some case profile evidence will be sufficient, and in others it will not. Each case must be judged on its facts.

*no
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rule
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profile*

File = FLORIDA-Carlne
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12/2/82

No. 80-2146 -- Florida v. Royer

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 search his luggage.

I

On January 3, 1978, respondent 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 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 unaware of the attention he had attracted, purchased a ticket to New York City and checked his two suitcases, placing on each suitcase an identification tag bearing the name "Holt" and the destination, "LaGuardia". As Royer made his way to the concourse which led to the airline boarding area, the two detectives approached him,

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identified themselves as policemen working out of the sheriff's office and asked if Royer had a "moment" to speak with them; Royer said "Yes".

Upon request, but without oral consent, Royer produced for the detectives his airline ticket and his driver's license. The airline ticket, like the baggage identification tags, bore the name "Holt," while the driver's license carried respondent's correct name, "Royer." When the detectives asked about the discrepancy, Royer explained that a friend had made the reservation in the name of "Holt." Royer became noticeably more nervous during this conversation, whereupon the detectives informed Royer that they were in fact narcotics investigators and that they had reason to suspect Royer of transporting narcotics.

The detectives did not return his airline ticket and identification but asked Royer to accompany them to a room, approximately forty feet away, ^{and} adjacent to the concourse. Royer said nothing in response but went with the officers as he had been asked to do. The room was later described by Detective Johnson as a "large storage closet", located ^{off} ~~at~~ the stewardess' ^{es} lounge and containing a small desk and two chairs. Without Royer's consent or agreement, Detective Johnson, using Royer's baggage checks stubs, retrieved the "Holt" luggage from the

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airline and brought it to the room where respondent and Detective Magdalena were waiting. Royer was asked if he would consent to a search of the suitcases. Without orally responding to this request, Royer produced a key and unlocked one of the suitcases, which the detective then opened without seeking further assent from Royer. Drugs were found in that suitcase. According to Detective Johnson, Royer stated that he did not know the combination to the lock on the second suitcase. When asked if he objected to the detective opening the second suitcase, Royer said "no, go ahead," and did not object when the detective explained that the suitcase might have to be broken open. The suitcase was pried open by the officers and more marijuana was found. Royer was then told that he was under arrest. Approximately fifteen minutes elapsed from the time the detectives initially approached respondent until his arrest upon the discovery of the contraband.

Prior to his trial for felony possession of marijuana,³ Royer made a motion to suppress the evidence obtained in the search of the suitcases. The trial court found that Royer's consent to the search was "freely and voluntarily given," and that, regardless of the consent, the warrantless search was reasonable because "the officer doesn't have the time to run out and get a search warrant because the plane is going to take

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off."⁴ Following the denial of the motion to suppress, Royer changed his plea from "not guilty" to "nolo contendere," specifically reserving the right to appeal the denial of the motion to suppress.⁵ Royer was convicted.

The District Court of Appeal, sitting en banc, reversed Royer's conviction.⁶ The court held that Royer had been involuntarily confined within the small room without probable cause; that the involuntary restraint had exceeded the limited restraint permitted by Terry v. Ohio, 392 U.S. 1 (1968), at the time his consent to the search was obtained; and that the consent to search was therefore invalid because tainted by the unlawful confinement.⁷

Several factors led the court to conclude that respondent's confinement was tantamount to arrest. Royer had "found himself in a small enclosed area being confronted by two police officers--a situation ^{that} ~~which~~ presents an almost classic definition of imprisonment." ^{389 So.2d, at 1018.} ~~State v. Royer~~, 389 So.2d 1015, 1016 (Fla. App. 1980). The detectives' statement to Royer that he was suspected

of transporting narcotics also bolstered the finding that Royer was "in custody" at the time the consent to search was given.

^{bi}
~~Id.~~ In addition, the detectives' possession of Royer's airline ticket and their retrieval and possession of his luggage made it

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clear, in the District Court of Appeals' view, that Royer was not free to leave. ^{bi}
~~Id.~~

At the suppression hearing Royer had testified that he was under the impression that he was not free to leave the officers' presence. The Florida Court of Appeals found that this apprehension "was much more than a well-justified subjective belief," for the State had conceded at oral argument before that court that "the officers would not have permitted Royer to leave the room even if [Royer] had erroneously thought he could." ^{bi}
~~Id.~~

The nomenclature used to describe Royer's confinement, the court found, was unimportant because under Dunaway v. New York, 442 U.S. 200 (1979), "[a] police confinement which ... goes beyond the limited restraint of a Terry investigatory stop may be constitutionally justified only by probable cause." ~~State v.~~

~~Royer~~, 389 So.2d, at 1019. Detective Johnson, who conducted the search, had specifically admitted at the suppression hearing that he did not have probable cause to arrest Royer until the suitcases were opened and their contents revealed. ^{bi}
~~Id.~~ In the absence of probable cause, the court concluded, Royer's consent to search, given only after he had been unlawfully confined, was ineffective to justify the search. ^{bi}
~~Id.~~ Because there was no proof at all that a "break in the chain of illegality" had

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occurred, the court found that Royer's consent was invalid as a matter of law. Id. at 1020. We granted the State's petition for certiorari, 454 U.S. 1079 (1981), and now affirm.

II

probable cause and either

Some preliminary observations are in order. First, it is unquestioned that without a warrant to search Royer's luggage ~~and~~ ^{or} ~~the absence of~~ ^{the existence} exigent circumstances, the officers' privilege to search the two suitcases depended on Royer's purported consent to the search. Neither is it disputed that where the validity of a search rests on consent, the state has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority. Schneckloth v. Bustamonte, 412 U.S. 218, 22, 233-234 (1973); Bumper v. North Carolina, 391 U.S. 543, 548 (1968); Johnson v. United States, 333 U.S. 10 (1948); Amos v. United States, 255 U.S. 333 (1921).

Second, law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. See Dunaway

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v. New York, 442 U.S. 200, 210 n. 12 (1979); Terry v. Ohio, 392 U.S. 1, 31, 32-33 (1966) (opinion of Harlan, J.), 34 (opinion of White, J.). Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. United States v. Mendenhall, 446 U.S. 544, 555 (1980) (opinion of Stewart, J.). The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. Terry v. Ohio, supra, at 32-33 (opinion of Harlan, J.), 34 (opinion of White, J.). He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. United States v. Mendenhall, supra at 556 (opinion of Stewart, J.). If there is no detention, no seizure within the meaning of the Fourth Amendment, however, no constitutional rights have been infringed.

Third, it is also clear that not all seizures of the person must be justified by probable cause to arrest for a crime. Prior to Terry v. Ohio, supra, any restraint on the person amounting to a seizure for the purposes of the Fourth Amendment was invalid unless justified by probable cause. Dunaway v. New York, 442 U.S. 200, 207-209 (1979). Terry created a limited exception to

THIS ASSUMES
NO REASONABLE
SUSPICION

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this general rule: certain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person is about to commit a crime. In that case, a stop and a frisk for weapons were found unexceptionable. Adams v. Williams, 407 U.S. 143 (1972), applied the same approach in the context of an informant's report that an unnamed individual, in a nearby vehicle was carrying narcotics and a gun. Although not expressly authorized in Terry, United States v. Brignoni-Ponce, 422 U.S. 873, 881-882 (1975), was unequivocal in saying that reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of a questioning limited to the purpose of the stop. In Brignoni-Ponce, that purpose was to verify or dispel the suspicion that the immigration laws were being violated, a governmental interest that was sufficient to warrant temporary detention for limited questioning. The petitioner does not suggest, nor do we, that a similar rationale would not warrant temporary detention for questioning on less than probable cause where the public interest involved is the suppression of illegal transactions in drugs or of any other serious crime 8

Fourth, Terry and its progeny, nevertheless, created only a limited exception to the general rule that seizures of the person require probable cause to arrest. Detentions may be

These double negatives suggest that Terry stops are OK in drug cases w/ reasonable suspicion

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investigative yet violative of the Fourth Amendment absent probable cause. Dunaway v. New York made this clear. There, the subject was taken to the police station from his home and, without being formally arrested, interrogated for an hour. The resulting incriminating statements were held inadmissible: reasonable suspicion of crime is insufficient to justify custodial interrogation even though the interrogation is investigative. Brown v. Illinois, 422 U.S. 590 (1975), and Davis v. Mississippi, 354 U.S. 721 (1965), are to the same effect.

Fifth, Dunaway and Brown also hold that statements given during a period of illegal detention are inadmissible even though voluntarily given provided they are the product of the illegal detention and not the result of an independent act of free will.

Brown v. Illinois, supra, at 598-599. In this respect those cases reiterated one of the principal holdings of Wong Sun v. United States, 371 U.S. 471 (1963).

Sixth, if the events in this case amounted to no more than a permissible police encounter in a public place or a justifiable Terry-type detention, Royer's consent to search his luggage, if voluntary, would have been effective to legalize the search of his two suitcases. Cf. United States v. Watson, 423 U.S. 411, 424-425 (1976). The Court of Appeals in the case before us,

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however, concluded not only that Royer had been seized ~~when~~ ^{before} he gave his consent to search his luggage but also that the bounds of an investigative stop had been exceeded. In its view the "confinement" in this case went beyond the limited restraint of a Terry investigative stop, and Royer's consent was thus tainted by the illegality, a conclusion that required reversal in the absence of probable cause to arrest. The question before us is whether the record warrants that conclusion. We think that it does.

III

The State contends that when Royer consented to the search of his luggage, he was not being illegally detained, first, ^{① state's First argument: consent} because the entire encounter was consensual and hence he had not been seized or detained at all; and, alternatively, because the ^{② state's second argument: invalid Terry stop} officers reasonably suspected Royer of carrying drugs, any seizure or detention to which he was subjected did not exceed the bounds of the kind of investigative confinement contemplated by Terry, Adams, and Brignoni-Ponce. ^{Need not address ②} We need not address the claim that the officers reasonably suspected Royer, for we decline to ^{rely on Fla. Ct.} overturn the Florida court's conclusion that when Royer gave his consent to search his luggage, he had been seized and subjected to detention or restraint beyond that permissible on mere

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suspicion and in the absence of probable cause.

2 X By the time Royer was informed that the officers wished to examine his luggage, he had identified himself when approached by the officers and had attempted to explain the discrepancy between the name shown on his identification and the name under which he had purchased his ticket and identified his luggage. Obviously, the officers were not satisfied, for they informed him they were narcotics agents and had reason to believe that he was carrying illegal drugs. They requested him to accompany them to the police room. Royer went with them. He found himself in a small room -- a large closet -- equipped with a desk and two chairs. He was alone with two police officers who again told him that they thought he was carrying narcotics. He also found that the officers, without his consent, had retrieved his checked luggage from the airlines. Obviously, what had begun as a consensual inquiry in a public place had transformed itself into an investigatory procedure in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions. The officers had Royer's ticket, they had his identification, and they had seized his luggage. It was never suggested to Royer that he was free to board his plane if he so chose, and he reasonably believed that he was being detained.

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At least as of that moment, any consensual aspects of the encounter had evaporated, and we cannot fault the Florida Court of Appeals in concluding that Terry v. Ohio and the cases following it did not justify the restraint to which Royer was then subjected. Consistent with this conclusion, the police conceded in the state courts that Royer would not have been free to leave the interrogation room had he asked to do so.⁹ Furthermore, the state's brief in this Court interprets the testimony of the officers at the suppression hearing as indicating that had Royer refused to consent to search his luggage, the officers would have held the luggage and sought a warrant to authorize the search. Petitioner's Brief 6.

We do not suggest that there is a litmus-paper test for distinguishing a consensual encounter from a seizure or for determining when a seizure exceeds the bounds of a Terry-type detention. Even in the discrete category of airport stops, there will be endless variation in the facts and circumstances surrounding such encounters, so much variation that the courts have not managed to reduce to a sentence or a paragraph a rule that will provide unarguable answers to the question whether there has been an unreasonable search or seizure in violation of the Fourth Amendment. We have not been able, for example, to

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improve upon the probable cause standard for distinguishing between legal and illegal arrests; yet the Courts are often deeply divided on whether the standard has been satisfied. We nevertheless must render judgment, and we think that the Florida Court of Appeals correctly relied on the rationale of Dunaway v. New York in overturning Royer's conviction.

There, the putative defendant was taken from his home and transported to the police station where he was interrogated for an hour before making incriminating statements. The Court held that the investigative detention authorized by Terry, Adams and Brignoni-Ponce did not authorize custodial interrogation in the absence of probable cause, even though the interrogatee was not arrested, his answers were not coerced, and the detention was investigative. Here, Royer was moved only a short distance and it was only a short time before the officers achieved their aim and arrested him. But he was alone in the police room with two officers who had seized his luggage and who sought to confirm their suspicions that he was carrying drugs. We doubt that the result would have been different in Dunaway had the suspect had been picked up on the street in front of the police station and had incriminated himself within fifteen minutes after his arrival at the station. The result should be the same here.

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IV

The officers testified at the suppression hearing and the Florida Court of Appeals held that there was not probable cause to arrest until Royer's bags were opened. The state nevertheless asserts in this Court that probable cause existed and that Royer was thus subject to arrest. If the state is correct, the fact that the officers did not believe there was probable cause and proceeded on a consensual or Terry-stop rationale would not foreclose the state from justifying Royer's custody by proving probable cause and hence removing any barrier to relying on Royer's consent to search. Peters v. New York, 392 U.S. 40, 66-67 (1968). We agree with the Florida Court of Appeals, however, that there was not probable cause to arrest Royer at the time he purported to give his consent to search his luggage. The facts are that a nervous young man with two American Tourister bags paid cash for an airline ticket to a "target city". These facts led to inquiry, which in turn revealed that the ticket had been bought under an assumed name. The proffered explanation did not satisfy the officers. We cannot agree with the state, if this is its position, that every nervous young man paying cash for a ticket to New York City under an assumed name and carrying two heavy American Tourister bags may be arrested and held to answer

✓ LA was their target

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for a serious felony charge.

V

Because we affirm the Florida Court of Appeals' conclusion that Royer was being illegally detained when he consented to search his luggage, we agree that the consent was tainted by the illegality and was ineffective to justify the search. The judgment of the Florida Court of Appeals is accordingly

affirmed.

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and voluntarily" was sustained by the evidence and that the Court of Appeals was, therefore, in error in setting it aside. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded to that court for further proceedings.

Mendenhall It is so ordered.

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, concurring in part and concurring in the judgment.

I join Parts I, II-B, II-C, and III of the Court's opinion. Because neither of the courts below considered the question, I do not reach the Government's contention that the agents did not "seize" the respondent within the meaning of the Fourth Amendment. In my view, we may assume for present purposes that the stop did constitute a seizure.¹ I would hold—as did the District Court—that the federal agents had reasonable suspicion that the respondent was engaging in criminal activity, and, therefore, that they did not violate the Fourth Amendment by stopping the respondent for routine questioning.

I

The relevant facts may be stated briefly. The respondent arrived at the Detroit Metropolitan Airport on a flight from Los Angeles. She was the last passenger to leave the aircraft.

¹ MR. JUSTICE STEWART concludes in Part II-A that there was no "seizure" within the meaning of the Fourth Amendment. He reasons that such a seizure occurs "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." *Ante*, at 554. MR. JUSTICE STEWART also notes that "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." *Ante*, at 552, quoting *Terry v. Ohio*, 392 U. S. 1, 34 (1968) (WHITE, J., concurring). I do not necessarily disagree with the views expressed in Part II-A. For me, the question whether the respondent in this case reasonably could have thought she was free to "walk away" when asked by two Government agents for her driver's license and ticket is extremely close.

Two agents of the Drug Enforcement Administration watched the respondent enter the terminal, walk to the baggage area, then change directions and proceed to an Eastern Airlines ticket counter. After the respondent accepted a boarding pass for a flight to Pittsburgh, the two agents approached her. They identified themselves as federal officers, and requested some identification. The respondent gave them her driver's license and airline ticket. The agents asked the respondent several brief questions. The respondent accompanied the agents to an airport office where a body search conducted by a female police officer revealed two plastic bags of heroin.

II

Terry v. Ohio, 392 U. S. 1 (1968), establishes that a reasonable investigative stop does not offend the Fourth Amendment.² The reasonableness of a stop turns on the facts and circumstances of each case. In particular, the Court has emphasized (i) the public interest served by the seizure, (ii) the nature and scope of the intrusion, and (iii) the objective facts upon which the law enforcement officer relied in light of his knowledge and expertise. See *Brown v. Texas*, 443 U. S. 47, 50-51 (1979); *Delaware v. Prouse*, 440 U. S. 648, 654-655 (1979); *United States v. Brignoni-Ponce*, 422 U. S. 873, 879-883 (1975); *Terry v. Ohio*, *supra*, at 20-22.

A

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

² The *Terry* Court held that the Warrant Clause of the Fourth Amendment does not apply to a "stop." This category of police conduct must survive only the Fourth Amendment's prohibition of "unreasonable searches and seizures." 392 U. S., at 20.

is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs, including heroin, may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.

To meet this pressing concern, the Drug Enforcement Administration since 1974 has assigned highly skilled agents to the Detroit Airport as part of a nationwide program to intercept drug couriers transporting narcotics between major drug sources and distribution centers in the United States. Federal agents have developed "drug courier profiles" that describe the characteristics generally associated with narcotics traffickers. For example, because the Drug Enforcement Administration believes that most drugs enter Detroit from one of four "source" cities (Los Angeles, San Diego, Miami, or New York), agents pay particular attention to passengers who arrive from those places. See *United States v. Van Lewis*, 409 F. Supp. 535, 538 (E.D. Mich. 1976), *aff'd*, 556 F. 2d 385 (CA6 1977). During the first 18 months of the program, agents watching the Detroit Airport searched 141 persons in 96 encounters. They found controlled substances in 77 of the encounters and arrested 122 persons. 409 F. Supp., at 539. When two of these agents stopped the respondent in February 1976, they were carrying out a highly specialized law enforcement operation designed to combat the serious societal threat posed by narcotics distribution.

B

Our cases demonstrate that "the scope of [a] particular intrusion, in light of all the exigencies of the case, [is] a central element in the analysis of reasonableness." *Terry v. Ohio*, *supra*, at 18, n. 15.⁴ The intrusion in this case was quite

⁴ For example, in *Delaware v. Prouse*, 440 U.S. 648 (1979), we considered the justification necessary for a random stop of a moving vehicle. Such stops, which may take place at night or on infrequently traveled

modest. Two plainclothes agents approached the respondent as she walked through a public area. The respondent was near airline employees from whom she could have sought aid had she been accosted by strangers. The agents identified themselves and asked to see some identification. One officer asked the respondent why her airline ticket and her driver's license bore different names. The agent also inquired how long the respondent had been in California. Unlike the petitioner in *Terry, supra*, at 7, the respondent was not physically restrained. The agents did not display weapons. The questioning was brief. In these circumstances, the respondent could not reasonably have felt frightened or isolated from assistance.

C

In reviewing the factors that led the agents to stop and question the respondent, it is important to recall that a trained law enforcement agent may be "able to perceive and articulate meaning in given conduct which would be wholly innocent to the untrained observer." *Brown v. Texas, supra*, at 52, n. 2. Among the circumstances that can give rise to reasonable suspicion are the agent's knowledge of the methods used in recent criminal activity and the characteristics of persons engaged in such illegal practices. Law enforcement officers may rely on the "characteristics of the

roads, interfere with freedom of movement, are inconvenient, and may be frightening. *Id.*, at 657. Thus, we held that police may not stop a moving vehicle without articulable and reasonable suspicion of unlawful activity. We explicitly distinguished our earlier decision in *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976), which did not require individualized suspicion for the stop of a motor vehicle at a fixed checkpoint, because a checkpoint stop constitutes a "lesser intrusion" than a random stop. 440 U. S., at 656. The motorist halted at a permanent checkpoint has less reason for anxiety because he "can see that other vehicles are being stopped [and] can see visible signs of the officers' authority. . . ." *United States v. Martinez-Fuerte, supra*, at 558, quoting *United States v. Ortiz*, 422 U. S. 891, 895 (1975).

area," and the behavior of a suspect who appears to be evading police contact. *United States v. Brignoni-Ponce*, 422 U. S., at 884-885. "In all situations the officer is entitled to assess the facts in light of his experience." *Id.*, at 885.

The two officers who stopped the respondent were federal agents assigned to the Drug Enforcement Administration. Agent Anderson, who initiated the stop and questioned the respondent, had 10 years of experience and special training in drug enforcement. He had been assigned to the Detroit Airport, known to be a crossroads for illicit narcotics traffic,⁴ for over a year and he had been involved in approximately 100 drug-related arrests. App. 7-8.

The agents observed the respondent as she arrived in Detroit from Los Angeles. The respondent, who appeared very nervous, engaged in behavior that the agents believed was designed to evade detection. She deplaned only after all other passengers had left the aircraft. Agent Anderson testified that drug couriers often disembark last in order to have a clear view of the terminal so that they more easily can detect government agents. *Id.*, at 9. Once inside the terminal the respondent scanned the entire gate area and walked "very, very slowly" toward the baggage area. *Id.*, at 10 (testimony of Agent Anderson). When she arrived there, she claimed no baggage. Instead, she asked a skycap for directions to the Eastern Airlines ticket counter located in a different terminal. Agent Anderson stood in line immediately behind the respondent at the ticket counter. Although she carried an American Airlines ticket for a flight from Detroit to Pittsburgh, she asked for an Eastern Airlines ticket. An airline employee gave her an Eastern Airlines boarding pass. *Id.*, at 10-11. Agent Anderson testified that drug couriers frequently travel with-

⁴From 1975 through 1978, more than 135 pounds of heroin and 22 pounds of cocaine were seized at the Detroit Airport. In 1978, 1,536 dosage units of other dangerous drugs were discovered there. See 596 F. 2d 706, 708, n. 1 (CA6 1979) (Weick, J., dissenting).

out baggage and change flights en route to avoid surveillance. *Ibid.* On the basis of these observations, the agents stopped and questioned the respondent.

III

The District Court, which had an opportunity to hear Agent Anderson's testimony and judge his credibility, concluded that the decision to stop the respondent was reasonable.⁶ I agree. The public interest in preventing drug traffic is great, and the intrusion upon the respondent's privacy was minimal. The specially trained agents acted pursuant to a well-planned, and effective, federal law enforcement program. They observed respondent engaging in conduct that they reasonably associated with criminal activity. Furthermore, the events occurred in an airport known to be frequented by drug couriers.⁷ In light of all of the circumstances, I would hold that the agents possessed reasonable and articulable suspicion of criminal activity when they stopped the respondent in a public place and asked her for identification.

The jurisprudence of the Fourth Amendment demands consideration of the public's interest in effective law enforcement as well as each person's constitutionally secured right to be free from unreasonable searches and seizures. In applying

⁶ Although the Court of Appeals reversed the judgment of the District Court, it did not explicitly reject this conclusion of law. See *id.*, at 707. The dissenting judge noted that the Court of Appeals failed to take issue with the District Court's conclusion that the agents had reasonable suspicion to make the investigatory stop. *Id.*, at 709 (Weick, J.).

⁷ The results of the Drug Enforcement Agency's efforts at the Detroit Airport, see *supra*, at 562, support the conclusion that considerable drug traffic flows through the Detroit Airport. Contrary to Mr. Justice WHITE's apparent impression, *post*, at 573-574, n. 11, I do not believe that these statistics establish by themselves the reasonableness of this search. Nor would reliance upon the "drug courier profile" necessarily demonstrate reasonable suspicion. Each case raising a Fourth Amendment issue must be judged on its own facts.

a test of "reasonableness," courts need not ignore the considerable expertise that law enforcement officials have gained from their special training and experience. The careful and commendable police work that led to the criminal conviction at issue in this case satisfies the requirements of the Fourth Amendment.

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today concludes that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveler changing planes in an airport terminal and escorting her to a DEA office for a strip-search of her person. This result is particularly curious because a majority of the Members of the Court refuse to reject the conclusion that Ms. Mendenhall was "seized," while a separate majority decline to hold that there were reasonable grounds to justify a seizure. MR. JUSTICE STEWART concludes that the DEA agents acted lawfully, regardless of whether there were any reasonable grounds for suspecting Ms. Mendenhall of criminal activity, because he finds that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. MR. JUSTICE POWELL's opinion concludes that even though Ms. Mendenhall may have been "seized," the seizure was lawful because her behavior while changing planes in the airport provided reasonable suspicion that she was engaging in criminal activity. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with our recognition that consent cannot be presumed from a

Solicitor General McCree, Assistant Attorney General Heymann, and Deputy Solicitor General Frey.

Bruce J. Ennis, Jr., argued the cause for the American Civil Liberties Union as *amicus curiae* urging affirmance. With him on the brief was Lawrence Herman.*

JUSTICE STEVENS delivered the opinion of the Court.

As Detroit police officers were about to execute a warrant to search a house for narcotics, they encountered respondent descending the front steps. They requested his assistance in gaining entry and detained him while they searched the premises. After finding narcotics in the basement and ascertaining that respondent owned the house, the police arrested him, searched his person, and found in his coat pocket an envelope containing 8.5 grams of heroin.¹

*David Crump and Michael C. Kuhn filed a brief for John B. Holmes, Jr., et al. as *amici curiae* urging reversal.

¹ The execution of the warrant is described in greater detail in Justice Moody's opinion for the Michigan Supreme Court:

"Upon arriving at the named address, Officer Roger Lehman saw the defendant go out the front door of the house and proceed across the porch and down the steps. When defendant was asked to open the door he replied that he could not because he left his keys inside, but he could ring someone over the intercom. Dwight Calhoun came to the door, but did not admit the police officers. As a result, the officers obtained entrance to the premises by forcing open the front door. Once admittance had been gained Officer Lehman instructed Officer Conant, previously stationed along the side of the house, to bring the defendant, still on the porch, into the house.

"After the eight occupants of the house were detained, a search of the premises revealed two plastic bags of suspected narcotics under the bar in the basement. After finding the suspected narcotics in the basement and upon determining that the defendant was the owner of the house, Officer Conant formally arrested the defendant for violation of the Controlled Substances Act of 1971. MCL 335.341 (4) (a); MSA 18.1070 (41) (4) (a). A custodial search conducted by Officer Conant revealed a plastic bag containing suspected heroin in the defendant's jacket pocket. It is this heroin, discovered on the person of the defendant, that forms the basis

Respondent was charged with possession of the heroin found on his person. He moved to suppress the heroin as the product of an illegal search in violation of the Fourth Amendment,² and the trial judge granted the motion and quashed the information. That order was affirmed by a divided panel of the Michigan Court of Appeals, 68 Mich. App. 571, 243 N. W. 2d 689, and by the Michigan Supreme Court over the dissent of three of its justices. 407 Mich. 432, 286 N. W. 2d 226. We granted the State's petition for certiorari, 449 U. S. 898, and now reverse.

I

The dispositive question in this case is whether the initial detention of respondent violated his constitutional right to be secure against an unreasonable seizure of his person. The State attempts to justify the eventual search of respondent's person by arguing that the authority to search premises granted by the warrant implicitly included the authority to search persons on those premises, just as that authority included an authorization to search furniture and containers in which the particular things described might be concealed. But as the Michigan Court of Appeals correctly noted, even if otherwise acceptable, this argument could not justify the initial detention of respondent outside the premises described in the warrant. See 68 Mich. App., at 578-580, 243 N. W.

of the instant possession charge." 407 Mich. 432, 441, 286 N. W. 2d 226, 228-227.

² The Fourth Amendment to the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment requires the several States to secure these rights. See *Payton v. New York*, 445 U. S. 573, 576; *Dunaway v. New York*, 442 U. S. 200, 207.

2d, at 692-693. If that detention was permissible, there is no need to reach the question whether a search warrant for premises includes the right to search persons found there, because when the police searched respondent, they had probable cause to arrest him and had done so.³ Our appraisal of the validity of the search of respondent's person therefore depends upon a determination whether the officers had the authority to require him to re-enter the house and to remain there while they conducted their search.⁴ The 9

³ Because there were several other occupants of the house, under Michigan law the evidence that narcotics had been found in the basement of respondent's house would apparently be insufficient to support a conviction. See *People v. Davenport*, 39 Mich. App. 252, 197 N. W. 2d 521 (1972). The Michigan Court of Appeals relied on *Davenport* to conclude that the officers did not have probable cause to arrest or search respondent even though he was the owner of a house in which contraband was found. 68 Mich. App., at 580-582, 243 N. W. 2d, at 692-693. Judge Bashara, dissenting in the Court of Appeals, *id.*, at 585, 243 N. W. 2d, at 695, and the three dissenting justices of the Michigan Supreme Court, 407 Mich., at 450, 463-464, 286 N. W. 2d, at 231, 237, pointed out that *Davenport*, which concerns the proof necessary to support a conviction, is not dispositive of the question whether the police had probable cause to arrest. See *Brinegar v. United States*, 338 U. S. 160, 174-176. Regardless of whether the police had probable cause to arrest respondent under Michigan law, probable cause within the meaning of the Fourth Amendment is not at issue here. Respondent does not challenge the conclusion that the evidence found in his home established probable cause to arrest him. See Brief for Respondent 17.

⁴ The "seizure" issue in this case should not be confused with the "search" issue presented in *Ybarra v. Illinois*, 444 U. S. 85. In *Ybarra* the police executing a search warrant for a public tavern detained and searched all of the customers who happened to be present. No question concerning the legitimacy of the detention was raised. Rather, the Court concluded that the search of *Ybarra* was invalid because the police had no reason to believe he had any special connection with the premises, and the police had no other basis for suspecting that he was armed or in possession of contraband. See *id.*, at 90-93. In this case, only the detention is at issue. The police knew respondent lived in the house, and

II

There was a "seizure" & the validity of the question

In assessing the validity of respondent's initial detention, we note first that it constituted a "seizure" within the meaning of the Fourth Amendment.⁶ The State does not contend otherwise, and the record demonstrates that respondent was not free to leave the premises while the officers were searching his home. It is also clear that respondent was not formally arrested until after the search was completed. The dispute therefore involves only the constitutionality of a pre-arrest "seizure" which we assume was unsupported by probable cause.

In *Dunaway v. New York*, 442 U. S. 200, the Court reaffirmed the general rule that an official seizure of the person must be supported by probable cause, even if no formal arrest is made. In that case police officers located a murder suspect at a neighbor's house, took him into custody, and transported him to the police station, where interrogation ultimately produced a confession. Because the suspect was not arrested until after he had confessed, and because he presumably would have been set free if probable cause had not been established during his questioning, the State argued that the pre-arrest detention should not be equated with an arrest and should be upheld as "reasonable" in view of the serious character of the crime and the fact that the police had an articulable basis for suspecting that Dunaway was involved. *Id.*, at 207. The Court firmly rejected the State's argument, noting that "the detention of petitioner was in

they did not search him until after they had probable cause to arrest and had done so.

⁶ "It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime—'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry v. Ohio*, 392 U. S. 1, 16.

important respects indistinguishable from a traditional arrest." *Id.*, at 212.⁹ We stated:

"Indeed, any '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.

"The central importance of the probable-cause requirement to the protection of a citizen's privacy afforded by the Fourth Amendment's guarantees cannot be compromised in this fashion. 'The requirement of probable cause has roots that are deep in our history.' *Henry v. United States*, 361 U. S. 98, 100 (1959). Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that 'common rumor or report, suspicion, or even "strong reason to suspect" was not adequate to support a warrant for arrest.' *Id.*, at 101 (footnotes omitted). The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience accommodating the factors relevant to the 'reasonableness' requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule. See *Brinegar v. United States*, [338 U. S., at 175-176]." *Id.*, at 213.

Although we refused in *Dunaway* to find an exception that would swallow the general rule, our opinion recognized that some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment. In these cases the intru-

⁹ The Court noted that *Dunaway* was "taken from a neighbor's home to a police car, transported to a police station, and placed in an interrogation room." He was not informed that he was free to leave, he would not have been free to leave and would have been physically restrained had he attempted to do so. 442 U. S., at 212.

Some "seizures" are lawful

sion on the citizen's privacy "was so much less severe" than that involved in a traditional arrest that "the opposing interests in crime prevention and detection and in the police officer's safety" could support the seizure as reasonable. *Id.*, at 209.

In the first such case, *Terry v. Ohio*, 392 U. S. 1, the Court recognized the narrow authority of police officers who suspect criminal activity to make limited intrusions on an individual's personal security based on less than probable cause. The Court approved a "frisk" for weapons as a justifiable response to an officer's reasonable belief that he was dealing with a possibly armed and dangerous suspect.⁷ In the second such case, *Adams v. Williams*, 407 U. S. 143, the Court relied on *Terry* to hold that an officer could forcibly stop a suspect to investigate an informant's tip that the suspect was armed and carrying narcotics.⁸ And in *United States v. Brignoni-Ponce*, 422 U. S. 873, the Court held that the special enforcement problems confronted by roving Border Patrol agents, though not sufficient to justify random stops of vehi-

⁷ In upholding the "frisk" employed by the officer in that case, the Court assumed, without explicitly stating, that the Fourth Amendment does not prohibit forcible stops when the officer has a reasonable suspicion that a crime has been or is being committed. See 392 U. S., at 32-33 (Harlan, J., concurring). *Id.*, at 34 (White, J., concurring). In *Adams v. Williams*, 407 U. S., at 146, the Court made explicit what was implicit in *Terry*:

"A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."

See also *United States v. Brignoni-Ponce*, 422 U. S. 873; *United States v. Cortez*, 449 U. S. 411.

⁸ The Court noted that the informant's tip was insufficient to justify an arrest or search based on probable cause under *Spinelli v. United States*, 393 U. S. 410, and *Aguilar v. Texas*, 378 U. S. 108, but the information "carried enough indicia of reliability to justify the officer's forcible stop of Williams." 407 U. S., at 147.

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cles near the Mexican border to question their occupants about their citizenship, *id.*, at 882-884,* were adequate to support vehicle stops based on the agents' awareness of specific articulable facts indicating that the vehicle contained illegal aliens. The Court reasoned that the difficulty in patrolling the long Mexican border and the interest in controlling the influx of illegal aliens justified the limited intrusion, usually lasting no more than a minute, involved in the stop. *Id.*, at 878-880.¹⁰ See also *United States v. Cortez*, 449 U. S. 411.

These cases recognize that some seizures admittedly covered by the Fourth Amendment constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause, so long as police have an articulable basis for suspecting criminal activity. In these cases, as in *Dunaway*, the Court was applying the ultimate standard of reasonableness embodied in the

*In several cases, the Court has concluded that the absence of any articulable facts available to the officer rendered a detention unreasonable. In *Delaware v. Prouse*, 440 U. S. 648, 663, the Court held that police could not make random stops of vehicles in order to check drivers' licenses and vehicle registrations in the absence of "articulable and reasonable suspicion" that the motorist was unlicensed or the car unregistered. In *Brown v. Texas*, 443 U. S. 47, we held that a statute requiring individuals to identify themselves was unconstitutional as applied because the police did not have any reasonable suspicion that the petitioner had committed or was committing a crime. Finally, in *Ybarra v. Illinois*, 444 U. S. 85, we held that police executing a search warrant at a tavern could not invoke *Terry* to frisk a patron unless the officers had individualized suspicion that the patron might be armed or dangerous.

¹⁰The detention approved in *Brignoni-Ponce* did not encompass a search of the vehicle. The Court had held in *Almeida-Sanchez v. United States*, 413 U. S. 266, that such a search must be supported by probable cause. In *United States v. Martinez-Fuerte*, 428 U. S. 543, the Court held that stops at permanent checkpoints involved even less intrusion to a motorist than the detention by the roving patrol, and thus a stop at such a checkpoint need not even be based on any individualized suspicion.

Terry
Adams
Brignoni-Ponce

Limited intrusion
and
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Limited
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Random
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Fourth Amendment.¹¹ They are consistent with the general rule that every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause. But they demonstrate that the exception for limited intrusions that may be justified by special law enforcement interests is not confined to the momentary, on-the-street detention accompanied by a frisk for weapons involved in *Terry* and *Adams*.¹² Therefore, in

¹¹ In his opinion for the Court in *Terry*, Chief Justice Warren identified "the central inquiry under the Fourth Amendment" as "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." 392 U. S., at 19. Before analyzing the specific stop and frisk involved in that case, he stated:

"The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. *Carroll v. United States*, 267 U. S. 132 (1925); *Beck v. Ohio*, 379 U. S. 89, 96-97 (1964)." *Id.*, at 21-22 (footnotes omitted).

¹² Justice WHITE, concurring in *Dunaway*, noted that *Terry* is not "an almost unique exception to a hard-and-fast standard of probable cause." Rather, "the key principle of the Fourth Amendment is reasonableness—the balancing of competing interests." 442 U. S., at 219. If the purpose underlying a *Terry* stop—investigating possible criminal activity—is to be served, the police must under certain circumstances be able to detain the individual for longer than the brief time period involved in *Terry* and *Adams*. As one commentator observed:

"It is clear that there are several investigative techniques which may be utilized effectively in the course of a *Terry*-type stop. The most common is interrogation, which may include both a request for identification and inquiry concerning the suspicious conduct of the person detained. Sometimes the officer will communicate with others, either police or private citizens, in an effort to verify the explanation tendered or to confirm the identification or determine whether a person of that identity is otherwise wanted. Or, the suspect may be detained while it is determined if in fact

"key principle" of 4th amendment is reasonableness

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order to decide whether this case is controlled by the general rule, it is necessary to examine both the character of the official intrusion and its justification.

III

Of prime importance in assessing the intrusion is the fact that the police had obtained a warrant to search respondent's house for contraband. A neutral and detached magistrate had found probable cause to believe that the law was being violated in that house and had authorized a substantial invasion of the privacy of the persons who resided there. The detention of one of the residents while the premises were searched, although admittedly a significant restraint on his liberty, was surely less intrusive than the search itself.¹³ Indeed, we may safely assume that most citizens—unless they intend flight to avoid arrest—would elect to remain in order to observe the search of their possessions. Furthermore, the type of detention imposed here is not likely to be exploited by the officer or unduly prolonged in order to gain more information, because the information the officers seek normally will be obtained through the search and not through the detention.¹⁴

an offense has occurred in the area, a process which might involve checking certain premises, locating and examining objects abandoned by the suspect, or talking with other people. If it is known that an offense has occurred in the area, the suspect may be viewed by witnesses to the crime. There is no reason to conclude that any investigative methods of the type just listed are inherently objectionable; they might cast doubt upon the reasonableness of the detention, however, if their use makes the period of detention unduly long or involves moving the suspect to another locale." 3 W. LaFare, *Search and Seizure* § 9.2, pp. 36-37 (1978).

¹³ "As the Court reiterated just a few years ago, the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' *United States v. United States District Court*, 407 U. S. 297, 313. And we have long adhered to the view that the warrant procedure minimizes the danger of needless intrusions of that sort." *Payton v. New York*, 445 U. S., at 585-586.

¹⁴ Professor LaFare has noted that the reasonableness of a detention may be determined in part by "whether the police are diligently pur-

ers, however, the decision will be made openly and deliberately, and considerations of "speed, flexibility, and secrecy" will be inapposite. Indeed, in view of management's admitted duty to bargain over the effects of a closing, see ante, at 2580, n. 15, it is difficult to understand why additional bargaining over the the closing itself would necessarily unduly delay or publicize the decision.

I am not in a position to judge whether mandatory bargaining over partial closings in all cases is consistent with our national labor policy, and neither is the Court. The primary responsibility to determine the scope of the statutory duty to bargain has been entrusted to the NLRB, which should not be reversed by the courts merely because they might prefer another view of the statute. *Ford Motor Co. v. NLRB*, 441 U.S. 488, 495-497, 99 S.Ct. 1842, 1848-1849, 60 L.Ed.2d 420 (1979); see *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 236, 83 S.Ct. 1139, 1149, 10 L.Ed.2d 308 (1963). I therefore agree with the Court of Appeals that employers presumptively have a duty to bargain over a decision to close an operation, and that this presumption can be rebutted by a showing that bargaining would be futile, that the closing was due to emergency financial circumstances, or that, for some other reason, bargaining would not further the purposes of the National Labor Relations Act. 627 F.2d 596, 601 (CA2 1980). I believe that this approach is amply supported by recent decisions of the Board. *E. g.*, *Brooks-Scanlon, Inc.*, 246 N.L.R.B. No. 76, 102 L.R.R.M. 1606 (1979); *Raskin Packing Co.*, 246 N.L.R.B. No. 15, 102 L.R.R.M. 1489 (1979); *M. & M. Transportation Co.*, 239 N.L.R.B. 73 (1978). With respect to the individual facts of this case, however, I would vacate the judgment of the Court of Appeals, and remand to the Board for further examination of the evidence. See *SEC v. Chenery Corp.*, 318 U.S. 80, 94-95, 63 S.Ct. 454, 462, 87 L.Ed. 626 (1943).



State of MICHIGAN, Petitioner,

v.

George SUMMERS.

No. 79-1794.

Argued Feb. 25, 1981.

Decided June 22, 1981.

Defendant was charged with possession of heroin and moved to suppress. The Recorder's Court of Detroit, Wayne County, Robert J. Colombo, J., suppressed the heroin and quashed the information, and the Michigan Court of Appeals, 68 Mich.App. 571, 243 N.W.2d 689, affirmed. The state appealed. The Michigan Supreme Court, 407 Mich. 432, 286 N.W.2d 226, affirmed. Certiorari was granted. The Supreme Court, Justice Stevens, held that if the evidence that a citizen's residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen's privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers of the law execute a valid warrant to search his home; thus, for Fourth Amendment purposes, a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants at the premises while a proper search is conducted.

Reversed.

Justice Stewart filed a dissenting opinion in which Justice Brennan and Justice Marshall joined.

1. Arrest — 63.5(5)

Even if warrant to search defendant's residence implicitly granted authority to search persons on those premises, just as that authority included authorization to search furniture and containers in which particular things described might be cop-

ceeded, that authority could not justify initial detention of defendant outside premises described in warrant. U.S.C.A.Const. Amend. 4.

2. Arrest \Rightarrow 63.5(1)

Where police officers executing warrant to search house for narcotics encountered defendant descending front steps, they requested his assistance in gaining entry and detained him while they searched premises, initial detention of defendant constituted "seizure" within meaning of Fourth Amendment. U.S.C.A.Const. Amend. 4.

See publication Words and Phrases for other judicial constructions and definitions.

3. Arrest \Rightarrow 63.5(1)

Some seizures admittedly covered by Fourth Amendment constitute such limited intrusions on personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause, so long as police have articulable basis for suspecting criminal activity. U.S.C.A.Const. Amend. 4.

4. Arrest \Rightarrow 63.1

Every arrest, and every seizure having essential attributes of formal arrest, is unreasonable unless supported by probable cause. U.S.C.A.Const. Amend. 4.

5. Arrest \Rightarrow 63.5(3)

In assessing justification for detention of an occupant of premises being searched for contraband pursuant to a valid warrant, both law enforcement interest and nature of "articulable facts" supporting detention are relevant. U.S.C.A.Const. Amend. 4.

6. Arrest \Rightarrow 63.5(3)

Existence of search warrant provides objective justification for detention of occupant of home subject to warrant in that judicial officer has determined that police have probable cause to believe that someone in home is committing a crime and neutral

magistrate rather than officer in field has made critical determination that police should be given special authorization to thrust themselves into privacy of home; connection of occupant to that home gives police officer easily identifiable and certain basis for determining that suspicion of criminal activity justifies detention of that occupant. U.S.C.A.Const. Amend. 4.

7. Arrest \Rightarrow 63.5(3)

If evidence that citizen's residence is harboring contraband is sufficient to persuade judicial officer that invasion of citizen's privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers of law execute valid warrant to search his home, and, therefore, warrant to search for contraband founded on probable cause implicitly carries with it limited authority to detain occupant of premises while proper search is conducted. U.S.C.A.Const. Amend. 4.

Syllabus*

When police officers executing a warrant to search a house for narcotics encountered respondent descending the front steps, they requested his assistance in gaining entry and detained him while they searched the premises. After finding narcotics and ascertaining that respondent owned the house, the police arrested him, searched his person, and found heroin in his coat pocket. Respondent, who was charged with possession of the heroin found on his person, moved to suppress the heroin as the product of an illegal search in violation of the Fourth Amendment. The trial judge granted the motion and quashed the information, and both the Michigan Court of Appeals and the Michigan Supreme Court affirmed.

Held: The initial detention of respondent, which constituted a "seizure" and was assumed to be unsupported by probable cause, did not violate his constitutional right to be secure against an unreasonable seizure of his person. For Fourth Amend-

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of

the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Detained

ment purposes, a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted. Because it was lawful to require respondent to re-enter and to remain in the house until evidence establishing probable cause to arrest him was found, his arrest and the search incident thereto were constitutionally permissible. Pp. 2589-2595.

407 Mich. 432, 286 N.W.2d 226, reversed.

Timothy A. Baughman, Detroit, Mich., for petitioner.

Elliott Schulder, Washington, D. C., for the U. S., as amicus curiae, by special leave of Court.

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Justice STEVENS delivered the opinion of the Court.

As Detroit police officers were about to execute a warrant to search a house for

1. The execution of the warrant is described in greater detail in Justice Moody's opinion for the Michigan Supreme Court:

"Upon arriving at the named address, Officer Roger Lehman saw the defendant go out the front door of the house and proceed across the porch and down the steps. When defendant was asked to open the door he replied that he could not because he left his keys inside, but he could ring someone over the intercom. Dwight Calhoun came to the door, but did not admit the police officers. As a result, the officers obtained entrance to the premises by forcing open the front door. Once admittance had been gained Officer Lehman instructed Officer Conant, previously stationed along the side of the house, to bring the defendant, still on the porch, into the house.

"After the eight occupants of the house were detained, a search of the premises revealed two plastic bags of suspected narcotics under the bar in the basement. After finding the suspected narcotics in the basement and upon determining that the defendant was the owner of the house, Officer Conant formally arrested the defendant for violation of the Controlled Sub-

narcotics, they encountered respondent descending the front steps. They requested his assistance in gaining entry and detained him while they searched the premises. After finding narcotics in the basement and ascertaining that respondent owned the house, the police arrested him, searched his person, and found in his coat pocket an envelope containing 8.5 grams of heroin.¹

Respondent was charged with possession of the heroin found on his person. He moved to suppress the heroin as the product of an illegal search in violation of the Fourth Amendment,² and the trial judge granted the motion and quashed the information. That order was affirmed by a divided panel of the Michigan Court of Appeals, 68 Mich.App. 571, 243 N.W.2d 689, and by the Michigan Supreme Court over the dissent of three of its justices. 407 Mich. 432, 286 N.W.2d 226. We granted the State's petition for certiorari, — U.S. —, 101 S.Ct. 265, 68 L.Ed.2d 127, and now reverse.

I

[1] The dispositive question in this case is whether the initial detention of respon-

stances Act of 1971. M.C.L. § 335.341(4)(a); M.S.A. § 18.1070(41)(4)(a). A custodial search conducted by Officer Conant revealed a plastic bag containing suspected heroin in the defendant's jacket pocket. It is this heroin, discovered on the person of the defendant, that forms the basis of the instant possession charge." 407 Mich., at 441, 286 N.W.2d, at 226-227.

2. The Fourth Amendment to the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment requires the several States to secure these rights. See *Payton v. New York*, 445 U.S. 573, 576, 100 S.Ct. 1371, 1374, 63 L.Ed.2d 639; *Dunaway v. New York*, 442 U.S. 200, 207, 99 S.Ct. 2248, 2253, 60 L.Ed.2d 824.

dent violated his constitutional right to be secure against an unreasonable seizure of his person. The State attempts to justify the eventual search of respondent's person by arguing that the authority to search premises granted by the warrant implicitly included the authority to search persons on those premises, just as that authority included an authorization to search furniture and containers in which the particular things described might be concealed. But as the Michigan Court of Appeals correctly noted, even if otherwise acceptable, this argument could not justify the initial detention of respondent outside the premises described in the warrant. See 68 Mich. App., at 578-580, 243 N.W.2d, at 692-693. If that detention was permissible, there is no need to reach the question whether a search warrant for premises includes the right to search persons found there, because when the police searched respondent, they had probable cause to arrest him and had done so.³ Our appraisal of the validity of the search of respondent's person therefore depends upon a determination whether the

officers had the authority to require him to re-enter the house and to remain there while they conducted their search.⁴

II

[2] In assessing the validity of respondent's initial detention, we note first that it constituted a "seizure" within the meaning of the Fourth Amendment.⁵ The State does not contend otherwise, and the record demonstrates that respondent was not free to leave the premises while the officers were searching his home. It is also clear that respondent was not formally arrested until after the search was completed. The dispute therefore involves only the constitutionality of a pre-arrest "seizure" which we assume was unsupported by probable cause.

In *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824, the Court reaffirmed the general rule that an official seizure of the person must be supported by probable cause, even if no formal arrest is made. In that case police officers located a murder suspect at a neighbor's house, took

3. Because there were several other occupants of the house, under Michigan law the evidence that narcotics had been found in the basement of respondent's house would apparently be insufficient to support a conviction. See *People v. Davenport*, 39 Mich.App. 252, 197 N.W.2d 521 (1972). The Michigan Court of Appeals relied on *Davenport* to conclude that the officers did not have probable cause to arrest or search respondent even though he was the owner of a house in which contraband was found. 68 Mich.App., at 580-582, 243 N.W.2d, at 692-693. Judge Bashara, dissenting in the Court of Appeals, 68 Mich.App., at 585, 243 N.W.2d, at 695, and the three dissenting justices of the Michigan Supreme court, 407 Mich., at 450, 463-464, 285 N.W.2d, at 231, 237, pointed out that *Davenport*, which concerns the proof necessary to support a conviction, is not dispositive of the question whether the police had probable cause to arrest. See *Brinegar v. United States*, 383 U.S. 160, 174-176, 69 S.Ct. 1302, 1310-1311, 93 L.Ed. 1879. Regardless of whether the police had probable cause to arrest respondent under Michigan law, probable cause within the meaning of the Fourth Amendment is not at issue here. Respondent does not challenge the conclusion that the evidence found in his home established probable cause to arrest him. See Brief for Respondent 17.

4. The "seizure" issue in this case should not be confused with the "search" issue presented in *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238. In *Ybarra* the police executing a search warrant for a public tavern detained and searched all of the customers who happened to be present. No question concerning the legitimacy of the detention was raised. Rather, the Court concluded that the search of *Ybarra* was invalid because the police had no reason to believe he had any special connection with the premises, and the police had no other basis for suspecting that he was armed or in possession of contraband. See 444 U.S., at 90-93, 100 S.Ct., at 341-343. In this case, only the detention is at issue. The police knew respondent lived in the house, and they did not search him until after they had probable cause to arrest and had done so.

5. "It is quite plain that the Fourth Amendment governs 'seizures' of persons which do not eventuate in a trip to the station house and prosecution for crime—'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry v. Ohio*, 392 U.S. 1, 15, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 889.

him into custody and transported him to the police station, where interrogation ultimately produced a confession. Because the suspect was not arrested until after he had confessed, and because he presumably would have been set free if probable cause had not been established during his questioning, the State argued that the pre-arrest detention should not be equated with an arrest and should be upheld as "reasonable" in view of the serious character of the crime and the fact that the police had an articulable basis for suspecting that Dunaway was involved. *Id.*, at 207, 99 S.Ct., at 2253. The Court firmly rejected the State's argument, noting that "the detention of petitioner was in important respects indistinguishable from a traditional arrest." *Id.*, at 212, 99 S.Ct., at 2256.⁶ We stated:

"Indeed, any '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.

"The central importance of the probable-cause requirement to the protection of a citizen's privacy afforded by the Fourth Amendment's guarantees cannot be compromised in this fashion. 'The requirement of probable cause has roots that are deep in our history.' *Henry v. United States*, 361 U.S. 98, 100 [80 S.Ct. 168, 170, 4 L.Ed.2d 134] (1959). Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that 'common rumor or report, suspicion, or even "strong reason to suspect" was not

adequate to support a warrant for arrest.' *Id.*, at 101 [80 S.Ct., at 170] (footnotes omitted). The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience accommodating the factors relevant to the 'reasonableness' requirement of the Fourth Amendment, and provides the relative simplicity and clarity necessary to the implementation of a workable rule. See *Brinegar v. United States*, [338 U.S., at 175-176, 69 S.Ct., at 1310-1311]." *Id.*, at 213, 99 S.Ct., at 2256.

Although we refused in *Dunaway* to find an exception that would swallow the general rule, our opinion recognized that some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment. In these cases the intrusion on the citizen's privacy "was so much less severe" than that involved in a traditional arrest that "the opposing interests in crime prevention and detection and in the police officer's safety" could support the seizure as reasonable. *Id.*, at 209, 99 S.Ct., at 2254.

In the first such case, *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, the Court recognized the narrow authority of police officers who suspect criminal activity to make limited intrusions on an individual's personal security based on less than probable cause. The Court approved a "frisk" for weapons as a justifiable response to an officer's reasonable belief that he was dealing with a possibly armed and dangerous suspect.⁷ In the second such

6. The Court noted that Dunaway was "taken from a neighbor's home to a police car, transported to a police station, and placed in an interrogation room." He was not informed that he was free to leave; he would not have been free to leave and would have been physically restrained had he attempted to do so. 442 U.S., at 212, 99 S.Ct., at 2256.

7. In upholding the "frisk" employed by the officer in that case, the Court assumed, without explicitly stating, that the Fourth Amendment does not prohibit forcible stops when the offi-

cer has a reasonable suspicion that a crime has been or is being committed. See *id.*, at 32-33, 88 S.Ct., at 1835-1836 (HARLAN, J., concurring). *Id.*, at 34, 88 S.Ct., at 1836 (WHITE, J., concurring). In *Adams v. Williams*, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612, the Court made explicit what was implicit in *Terry*:

"A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in

case, *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612, the Court relied on *Terry* to hold that an officer could forcibly stop a suspect to investigate an informant's tip that the suspect was armed and carrying narcotics.⁸ And in *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607, the Court held that the special enforcement problems confronted by roving Border Patrol agents, though not sufficient to justify random stops of vehicles near the Mexican border to question their occupants about their citizenship, *id.*, at 882-884, 95 S.Ct., at 2580-2581,⁹ were adequate to support vehicle stops based on the agents' awareness of specific articulable facts indicating that the vehicle contained illegal aliens. The Court reasoned that the difficulty in patrolling the long Mexican

light of the facts known to the officer at the time."

See also *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607; *United States v. Cortez*, — U.S. —, 101 S.Ct. 690, 66 L.Ed.2d 621.

8. The Court noted that the informant's tip was insufficient to justify an arrest or search based on probable cause under *Spinelli v. United States*, 293 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637, and *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723, but the information "carried enough indicia of reliability to justify the officer's forcible stop of Williams." 407 U.S., at 147, 92 S.Ct., at 1924.
9. In several cases, the Court has concluded that the absence of any articulable facts available to the officer rendered a detention unreasonable. In *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660, the Court held that police could not make random stops of vehicles in order to check drivers licenses and vehicle registrations in the absence of "articulable and reasonable suspicion" that the motorist was unlicensed or the car unregistered. In *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357, we held that a statute requiring individuals to identify themselves was unconstitutional as applied because the police did not have any reasonable suspicion that the petitioner had committed or was committing a crime. Finally, in *Ybarra v. Illinois*, *supra*, we held that police executing a search warrant at a tavern could not invoke *Terry* to frisk a patron unless the officers had individualized suspicion that the patron might be armed or dangerous.
10. The detention approved in *Brignoni-Ponce* did not encompass a search of the vehicle. The

border and the interest in controlling the influx of illegal aliens justified the limited intrusion, usually lasting no more than a minute, involved in the stop. *Id.*, at 878-880, 95 S.Ct., at 2578, 2579.¹⁰ See also *United States v. Cortez*, — U.S. —, 101 S.Ct. 690, 66 L.Ed.2d 621.

[3.] These cases recognize that some seizures admittedly covered by the Fourth Amendment constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause, so long as police have an articulable basis for suspecting criminal activity. In these cases, as in *Dunaway*, the Court was applying the ultimate standard of reasonableness embodied in the Fourth Amendment.¹¹ They are con-

Court had held in *Almeida-Sanchez v. United States*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596, that such a search must be supported by probable cause. In *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116, the Court held that stops at permanent checkpoints involved even less intrusion to a motorist than the detention by the roving patrol, and thus a stop at such a checkpoint need not even be based on any individualized suspicion.

11. In his opinion for the Court in *Terry*, Chief Justice Warren identified "the central inquiry under the Fourth Amendment" as "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." 392 U.S., at 19, 88 S.Ct., at 1878. Before analyzing the specific stop and frisk involved in that case, he stated:

"The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. *Carroll v. United States*, 267 U.S. 132, [45 S.Ct. 260, 69 L.Ed. 543] (1925); *Beck v. Ohio*, 379 U.S. 89, 96-97, [85 S.Ct. 223, 228, 13 L.Ed.2d 142] (1964)." 392 U.S., at 21-22, 88 S.Ct., at 1879-1880 (footnotes omitted).

sistent with the general rule that every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause. But they demonstrate that the exception for limited intrusions that may be justified by special law enforcement interests is not confined to the momentary, on-the-street detention accompanied by a frisk for weapons involved in *Terry* and *Adams*.¹² Therefore, in order to decide whether this case is controlled by the general rule, it is necessary to examine both the character of the official intrusion and its justification.

III

Of prime importance in assessing the intrusion is the fact that the police had obtained a warrant to search respondent's house for contraband. A neutral and detached magistrate had found probable cause to believe that the law was being violated in that house and had authorized a substan-

tial invasion of the privacy of the persons who resided there. The detention of one of the residents while the premises were searched, although admittedly a significant restraint on his liberty, was surely less intrusive than the search itself.¹³ Indeed, we may safely assume that most citizens—unless they intend flight to avoid arrest—would elect to remain in order to observe the search of their possessions. Furthermore, the type of detention imposed here is not likely to be exploited by the officer or unduly prolonged in order to gain more information, because the information the officers seek normally will be obtained through the search and not through the detention.¹⁴ Moreover, because the detention in this case was in respondent's own residence, it could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station.¹⁵ In

12. Justice WHITE, concurring in *Dunaway*, noted that *Terry* is not "an almost unique exception to a hard-and-fast standard of probable cause." Rather, "the key principle of the Fourth Amendment is reasonableness—the balancing of competing interests." 442 U.S., at 219, 99 S.Ct., at 2260 (WHITE, J., concurring). If the purpose underlying a *Terry* stop—investigating possible criminal activity—is to be served, the police must under certain circumstances be able to detain the individual for longer than the brief time period involved in *Terry* and *Adams*. As one commentator observed:

"It is clear that there are several investigative techniques which may be utilized effectively in the course of a *Terry*-type stop. The most common is interrogation, which may include both a request for identification and inquiry concerning the suspicious conduct of the person detained. Sometimes the officer will communicate with others, either police or private citizens, in an effort to verify the explanation tendered or to confirm the identification or determine whether a person of that identity is otherwise wanted. Or, the suspect may be detained while it is determined if in fact an offense has occurred in the area, a process which might involve checking certain premises, locating and examining objects abandoned by the suspect, or talking with other people. If it is known that an offense has occurred in the area, the suspect may be viewed by witnesses to the crime. There is no reason to conclude that any investigative methods of the type just

listed are inherently objectionable; they might cast doubt upon the reasonableness of the detention, however, if their use makes the period of detention unduly long or involves moving the suspect to another locale." 3 W. LaFare, *Search and Seizure* § 9.2, pp. 36-37 (1978).

13. "As the Court reiterated just a few years ago, the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' *United States v. United States District Court*, 407 U.S. 297, 313, [92 S.Ct. 2125, 2134, 32 L.Ed.2d 752]. And we have long adhered to the view that the warrant procedure minimizes the danger of needless intrusions of that sort." *Payton v. New York*, 445 U.S. 573, 585-586, 100 S.Ct. 1371, 1379-1380.

14. Professor LaFare has noted that the reasonableness of a detention may be determined in part by "[w]hether the police are diligently pursuing a means of investigation which is likely to resolve the matter one way or another very soon..." 3 W. LaFare, *Search and Seizure* § 9.2, p. 40 (1978).

15. Moreover, unlike the seizure in *Dunaway*, which was designed to provide an opportunity for interrogation and did lead to *Dunaway's* confession, the seizure in this case is not likely to have coercive aspects likely to induce self-incrimination.

sharp contrast to the custodial interrogation in *Dunaway*, the detention of this respondent was "substantially less intrusive" than an arrest. 442 U.S., at 210, 99 S.Ct., at 2255.¹⁶

[5] In assessing the justification for the detention of an occupant of premises being searched for contraband pursuant to a valid warrant, both the law enforcement interest and the nature of the "articulable facts" supporting the detention are relevant. Most obvious is the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found. Less obvious, but sometimes of greater importance, is the interest in minimizing the risk of harm to the officers. Although no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence.¹⁷ The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation. Cf. 2 W. LaFare, *Search and Seizure* § 4.9, pp. 150-151 (1978). Finally, the orderly completion of the search may be facilitated if the occupants of the premises are present. Their self-interest may induce them to open

locked doors or locked containers to avoid the use of force that is not only damaging to property but may also delay the completion of the task at hand.

[6] It is also appropriate to consider the nature of the articulable and individualized suspicion on which the police base the detention of the occupant of a home subject to a search warrant. We have already noted that the detention represents only an incremental intrusion on personal liberty when the search of a home has been authorized by a valid warrant. The existence of a search warrant, however, also provides an objective justification for the detention. A judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime. Thus a neutral magistrate rather than an officer in the field has made the critical determination that the police should be given a special authorization to thrust themselves into the privacy of a home.¹⁸ The connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant.

[7] In *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639, we held

16. We do not view the fact that respondent was leaving his house when the officers arrived to be of constitutional significance. The seizure of respondent on the sidewalk outside was no more intrusive than the detention of those residents of the house that the police found inside.

17. The fact that our holding today deals with a case in which the police had a warrant does not, of course, preclude the possibility that comparable police conduct may be justified by exigent circumstances in the absence of a warrant. No such question, however, is presented by this case.

18. Justice Jackson recognized the significance of this determination in *Johnson v. United States*, 333 U.S. 10, 13-14, 68 S.Ct. 367, 368-369, 92 L.Ed. 436:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in

requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. Crime, even in the privacy of one's own quarters is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." (Footnotes omitted).

that police officers may not enter a private residence to make a routine felony arrest without first obtaining a warrant. In that case we rejected the suggestion that only a search warrant could adequately protect the privacy interests at stake, noting that the distinction between a search warrant and an arrest warrant was far less significant than the interposition of the magistrate's determination of probable cause between the zealous officer and the citizen:

"It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within."

445 U.S., at 602-603, 100 S.Ct., at 1388.

That holding is relevant today. If the evidence that a citizen's residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen's

privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers of the law execute a valid warrant to search his home.¹⁹ Thus, for Fourth Amendment purposes, we hold that a warrant to search for contraband²⁰ founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.²¹

Because it was lawful to require respondent to re-enter and to remain in the house until evidence establishing probable cause to arrest him was found, his arrest and the search incident thereto were constitutionally permissible. The judgment of the Supreme Court of Michigan must therefore be reversed.

It is so ordered.

Justice STEWART, with whom Justice BRENNAN and Justice MARSHALL join, dissenting.

The Court is correct in stating that "some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment." *Ante*, at 2591. But to escalate this statement into some kind of a general rule is to ignore the protections that the Fourth Amendment guarantees to us all. There are only two types of seizures

adopt today does not depend upon such an ad hoc determination, because the officer is not required to evaluate either the quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.

19. In refusing to approve seizures based on less than probable cause, the *Dunaway* Court declined to adopt a "multifactor balancing test of 'reasonable police conduct under the circumstances' to cover all seizures that do not amount to technical arrests." The Court noted: "The protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases, especially when that balancing may be done in the first instance by police officers engaged in the 'often competitive enterprise of ferreting out crime.'" 442 U.S., at 213, 99 S.Ct., at 2257.

As Justice WHITE noted in his concurrence in *Dunaway*, if police are to have workable rules, the balancing of the competing interests inherent in the *Terry* principle "must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers." 442 U.S., at 219-220, 99 S.Ct., at 2260 (WHITE, J., concurring). The rule we

20. We do not decide whether the same result would be justified if the search warrant merely authorized a search for evidence. Cf. *Zurcher v. Stanford Daily*, 436 U.S. 547, 560, 98 S.Ct. 1970, 1978, 56 L.Ed.2d 525. See also *id.*, at 581, 98 S.Ct., at 1989 (STEVENS, J., dissenting).

21. Although special circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case, we are persuaded that this routine detention of residents of a house while it was being searched for contraband pursuant to a valid warrant is not such a case.

that need not be based on probable cause. The first, represented by the *Terry* line of cases, is a limited stop to question a person and to perform a pat-down for weapons when the police have reason to believe that he is armed and dangerous. *E. g.*, *Terry v. Ohio*, 392 U.S. 1, 23-24, 88 S.Ct. 1868, 1881, 20 L.Ed.2d 889. The second is a brief stop of vehicles near our international borders to question occupants of the vehicles about their citizenship. *E. g.* *United States v. Brignoni-Ponce*, 422 U.S. 873, 881, 95 S.Ct. 2574, 2580, 45 L.Ed.2d 607.

From these two special exceptions to the general prohibition on seizures not based on probable cause, the Court leaps to the very broad idea that courts may approve a wide variety of seizures not based on probable cause, so long as the courts find, after balancing the law enforcement purposes of the police conduct against the severity of their intrusion, that the seizure appears "reasonable." *Ante*, at 2592-2593 and nn. 11-12. But those two lines of cases do not represent some sort of exemplary balancing text for Fourth Amendment cases. Rather, they represent two isolated exceptions to the general rule that the Fourth Amendment itself has already performed the constitutional balance between police objectives and personal privacy. The seizure permitted by the Court today, the detention of a person at his home while the police execute a search warrant for contraband inside it, is categorically different from those two special exceptions to the warrant and probable cause requirement, and poses a significantly greater threat to the protections guaranteed by the Constitution.

I

The common denominator of the *Terry* cases and the border checkpoint cases is the presence of some governmental interest independent of the ordinary interest in investigating crime and apprehending suspects, an interest important enough to overcome the presumptive constitutional restraints on police conduct. At issue in *Terry* was "more than the governmental interest in

investigating crime; in addition there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." *Terry v. Ohio*, *supra*, 392 U.S., at 23, 88 S.Ct., at 1881. Though the officer in *Terry* was engaged in investigating crime, the governmental purpose that justified the stop and pat-down was not the investigation itself, but "the neutralization of danger to the policeman in the investigative circumstance." *Id.*, at 26, 88 S.Ct., at 1882. Stating its essential holding, the Court said: "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Id.*, at 24, 88 S.Ct., at 1881.

Similarly, in *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612, the officer had received an informant's tip, not amounting to probable cause, that Williams was carrying narcotics and a gun. The Court held that the officer acted legally in reaching into the car and intruding on Williams' person to see if Williams indeed was in possession of a lethal weapon. In so holding, the Court made clear that what justified this intrusion on Williams' person was not the possibility of finding contraband narcotics, but rather the officer's need to protect himself from harm by seizing the suspected gun: "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence" *Id.*, at 146, 92 S.Ct., at 1923, accord, *Pennsylvania v. Mimms*, 434 U.S. 106, 110, 98 S.Ct. 330, 333, 54 L.Ed.2d 331. See *Ybarra v. Illinois*, 444 U.S. 85, 93, 100 S.Ct. 338, 343, 62 L.Ed.2d 238.

In *United States v. Brignoni-Ponce*, *supra*, the Court approved a limited stop of

vehicles by patrols of immigration officers near the Mexican border, but in doing so it stressed the unique governmental interest in preventing the illegal entry of aliens. The Court held that brief stops and inquiries based on less than probable cause to search or arrest were necessary because the entry of undocumented aliens creates "significant economic and social problems, competing with citizens and legal resident aliens for jobs, and generating extra demand for social services." 422 U.S., at 879, 95 S.Ct., at 2579. And in *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116, upholding similarly brief stops and inquiries at permanent checkpoints, the Court relied on the unique difficulty of patrolling a 2,000-mile long and virtually uninhabited border area, a difficulty that would prove insuperable if the government could stop a vehicle only on the basis of probable cause to believe that that particular vehicle contained illegal entrants. *Id.*, at 552, 96 S.Ct., at 3080.

It seems clear, therefore, that before a court can uphold a detention on less than probable cause on the ground that it is "reasonable" in the light of the competing interests, the government must demonstrate an important purpose beyond the normal goals of criminal investigation, or must demonstrate an extraordinary obstacle to such investigation.

II

What the Court approves today is justified by no such special governmental interest or law enforcement need. There were only two governmental purposes supporting

the detention of the respondent.¹ One was "the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found." *Ante*, at 2594. The other was that "the orderly completion of the search may be facilitated if the occupants of the premises are present." *Ante*, at 2594. Unlike the law enforcement objectives that justified the police conduct in *Terry* and the border stop cases, these objectives represented nothing more than the ordinary police interest in discovering evidence of crime and apprehending wrongdoers. And the Fourth and Fourteenth Amendments impose significant restraints upon these traditional police activities, even though the police and the courts may find those restraints unreasonably inconvenient.

If the police, acting without probable cause, can seize a person to make him available for arrest in case probable cause is later developed to arrest him, the requirement of probable cause for arrest has been turned upside down. And if the police may seize a person without probable cause in order to "facilitate" the execution of a warrant that did not authorize his arrest, the fundamental principle that the scope of a search and seizure can be justified only by the scope of the underlying warrant has suffered serious damage. There is no authority in this Court for the principle that the police can engage in searches and seizures without probable cause simply because to do so enhances their ability to conduct investigations which may eventually lead to probable cause. See *Davis v. Mississippi*, 394 U.S. 721, 726-727, 89 S.Ct. 1394, 1397, 22 L.Ed.2d 676.²

1. As the Court acknowledges, *ante*, at 2593, the record in this case presents no evidence whatsoever that the police feared any threat to their safety or that of others from the conduct of the respondent, or that they could reasonably have so feared. The Court says that this nevertheless was the "kind of transaction that may give rise to sudden violence . . ." *Ante*, at 2593. But where the police cannot demonstrate, on the basis of specific and articulable facts, a reasonable belief that a person threatens physical harm to them or others, the speculation that other persons in that circumstance might

pose such a threat cannot justify a search or seizure. *Ybarra v. Illinois*, 444 U.S. 85, 92-93, 100 S.Ct. 338, 342-343, 62 L.Ed.2d 238.

2. In perplexing citation, the Court notes our holding in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639, that an arrest warrant based on probable cause justifies entering a person's home to carry out the arrest, and declares that *Payton* "is relevant today." *Ante*, at 2594-2595. But I had thought that the very point of the passage of the Court quotes from *Payton*, is that the police would be justified in arresting a person in his own home because

Beyond the issue of the governmental interest justifying the detention, I question the Court's view that the detention here is of the limited, unintrusive sort that permits the Court to engage in a "reasonableness" balancing test. As the Court said in *Dunaway v. New York*, 442 U.S. 200, 210, 99 S.Ct. 2248, 2255, 60 L.Ed.2d 824, *Terry v. Ohio* "defined a special category of Fourth Amendment 'seizures' so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test." (Emphasis added.) As we then noted in *Dunaway*, the pat-down searches in *Terry*, *Adams*, and *Mimms* were declared legal because they were extremely limited in time and in the degree of personal intrusion. *Id.*, at 210-211, 99 S.Ct., at 2255-2256. The Court also noted that in the border cases, the stops normally consumed less than a minute and involved no more than brief interrogation. *Id.*, at 211, 99 S.Ct., at 2256. Thus, in the rare cases in which the Court has permitted an independent balancing of interests, the police intrusion has been extremely narrow. Moreover, the Court has required that the stop and inquiry or search be "reasonably

they had a warrant for his arrest based upon probable cause to believe that he had violated the criminal law. Since it is the absence of such probable cause that lies at the heart of this case, I fail to understand *Payton's* "relevance."

3. The record does not clearly reveal the length of the search in this case. In *Harris v. United States*, 331 U.S. 145, 67 S.Ct. 1098, 91 L.Ed. 1399, an FBI search of a one-bedroom apartment for burglar tools and a pair of checks consumed 5 hours. See also *Stanford v. Texas*, 379 U.S. 476, 477, 85 S.Ct. 506, 507, 13 L.Ed.2d 431.

4. I also question the Court's confident assertions about the inoffensive nature of the detention in this case. First, the Court says the detention was innocuous because it was less intrusive than the search that was mandated by the warrant. *Ante*, at 2593. This reasoning is, of course, circular, since the very question of the severity of the detention arises only because it was not based on a warrant or probable cause.

Second, the Court says that the intrusion was not a serious one because a reasonable-minded

related in scope to the justification for their initiation," *Terry v. Ohio*, *supra*, 392 U.S., at 29, 88 S.Ct., at 1884, see *United States v. Brignoni-Ponce*, *supra*, 422 U.S., at 881, 95 S.Ct., at 2580, and, under that requirement, the unusual governmental or law enforcement interests justifying the pat-down stops and border stops have provided a limiting principle ensuring the narrowness of the police action. The detention approved by the Court today, however, is of a very different order.

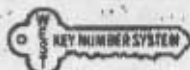
The explicit holding of the Court is that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Ante*, at 2595 (footnotes omitted). Though on superficial reading, this language may suggest a minor intrusion of brief duration, a detention "while a proper search is being conducted" can mean a detention of several hours.³ The police thereby make the person a prisoner in his own home for a potentially very long period of time.⁴ Moreover, because of the questionable nature of the governmental interest asserted by the State and acknowledged by the Court in this case, the requirement

citizen would in fact want to be present at a search of his house unless he was fleeing to avoid arrest. *Ante*, at 2593. But I must infer that the respondent here did not want to be present in his house during the search, else he would not have brought this claim, and the law cannot penalize him for "fleeing arrest" when the police did not have probable cause to arrest him. This second reason amounts to the view that a person cannot assert his rights under the exclusionary rule if he stands to benefit from the exclusion.

Finally, the Court observes that this sort of detention is not likely to be exploited or unduly prolonged by the police, since the officers are more likely to find the information they seek through the search than through the detention. *Ante*, at 2593. I confess I do not understand this reason. It seems no more than a restatement of the view that the police may detain the person to have him available for arrest when they complete the search, but that view merely begs the question whether the potential duration of the search threatens the person with a lengthy detention.

that the scope of the intrusion be reasonably related to its justification does not provide a limiting principle for circumscribing the detention. If the purpose of the detention is to help the police make the search, the detention can be as long as the police find it necessary to protract the search.⁵

In *Dunaway*, the Court reaffirmed that the "long-prevailing standards" of probable cause embody the "best compromise that has been found for accommodating [the] often opposing interests" in "safeguard[ing] citizens from rash and unreasonable interferences with privacy" and in "seek[ing] to give fair leeway for enforcing the law in the community's protection." *Dunaway v. New York*, *supra*, 442 U.S., at 208, 99 S.Ct., at 2254, quoting *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879. Because the present case presents no occasion for departing from this principle, I respectfully dissent.



NEW YORK STATE LIQUOR AUTHORITY

v.

Dennis BELLANCA, etc., et al.

No. 80-813.

June 22, 1981.

Owners of nightclubs, bars and restaurants brought action in which they sought

5. The Court adverts to this problem only by suggesting that "special circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case." *Ante*, at 2595, n. 21. But the Court provides no criteria for identifying "special circumstances" or for determining when a detention is "prolonged"; in particular, it fails to tell law enforcement officers whether a detention will always be permissible, however protracted, so as

declaratory judgment that New York statute prohibiting topless dancing at licensed premises was unconstitutional and sought injunctive relief. The Supreme Court, Erie County, Special Term, John H. Doerr, J., granted plaintiffs summary judgment declaring statute unconstitutional, and State appealed. The Court of Appeals, 429 N.Y. S.2d 616, 50 N.Y.2d 524, 407 N.E.2d 460, Wachtler, J., affirmed, and certiorari was granted. The Supreme Court held that statute was constitutional.

Reversed.

Justice Marshall concurred in the judgment.

Justice Brennan dissented from summary disposition.

Justice Stevens dissented and filed opinion.

1. Intoxicating Liquors ¶6

State has absolute power under Twenty-First Amendment to prohibit totally the sale of liquor within its boundaries. U.S.C. A.Const. Amend. 21.

2. Intoxicating Liquors ¶6

State has broad power under Twenty-First Amendment to regulate time, places and circumstances under which liquor may be sold. U.S.C.A.Const. Amend. 21.

3. Intoxicating Liquors ¶15

New York statute prohibiting topless dancing in establishment licensed by state to serve liquor was not unconstitutional. N.Y.Alcoholic Beverage Control Law § 106, subd. 6a; U.S.C.A.Const. Amend. 21.

It does not exceed the length of the search of the house. This ambiguity casts doubt on the Court's assertion, *ante*, at 2595, n. 19, that its holding will not require individual police officers to engage in the sort of on-the-scene, ad hoc legal judgments which pose a serious threat to Fourth and Fourteenth Amendment protections. *Dunaway v. New York*, 442 U.S. 200, 213, 99 S.Ct. 2248, 2256, 60 L.Ed.2d 824.

mfs 12/09/82

To: JUSTICE POWELL
From: Michael
Re: JUSTICE WHITE's draft in Florida v. Royer, No. 80-2146

My overall reaction to the Florida v. Royer draft is to be happier with what JUSTICE WHITE does not do than with what he does do. There had been some fear that he might condemn the police behavior too soon, holding, for example, that there had been an unjustifiable seizure on the concourse. He does not do this. Rather, he relies on the fact that the police went beyond a Terry stop in taking Royer to the closet, seizing his luggage, refusing to return his ticket and license, failing to advise him of his right to refuse his consent, etc. This is in accordance with your views at Conference.

The problem I have is with the way JUSTICE WHITE goes about finding that there was an "investigative confinement."¹ On page 10 he begins part III with a summary of the State's contentions: first, the State makes a consent argument; second, the State claims there was a valid Terry stop. He then says that the Court "need not address" the State's second argument because it defers to the Florida court's finding. For the rest of part III, pp. 11-13, he explains why the Florida court was correct in rejecting the second argument. There is no clear focus on the

1. Dunaway called it an "arrest." I would be happier to say that this, too, is an "arrest." It would make analysis easier to have fewer labels. Anything beyond an investigative, or Terry, stop should be an "arrest" or a "confinement." There should not be further distinctions.

State's first argument (the one he supposedly is addressing), although occasional passages relate to it.

I recommend that you ask JUSTICE WHITE to rewrite the (long) sentence that begins on the bottom of page 10 and carries over to the top of page 11. He does address the State's second claim. It is the central issue in this case. The Court should say it is addressing the issue. If JUSTICE WHITE follows this suggestion, part III will still not be a model of clarity, but at least it will deal with the State's principal arguments and reach the proper conclusion for the right reasons.

Two passages caught my eye on first reading that proved unobjectionable on closer analysis. On page 7, lines 7-9, JUSTICE WHITE writes:

The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way.

This sentence is unobjectionable because it refers to a person about whom the police do not have reasonable suspicion. (The sentence after it makes this point a little bit clearer.) It does not refer to someone like Royer, about whom the police may have had reasonable suspicion on the basis of the drug courier profile. And on page 8, lines 15-19, he writes:

The petitioner does not suggest, nor do we, that [the Terry, Williams, Brignoni-Ponce] rationale would not warrant temporary detention for questioning on less than probable cause where the public interest involved is the suppression of illegal transactions in drugs or of any other serious crime.

I cannot imagine why JUSTICE WHITE includes such a convoluted sentence. The suggestion seems to be that Terry stops are all right in drug cases, assuming that the normal requirements are

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satisfied. I am sure that this is an acceptable conclusion for you. (There may be a mistake here in the use of "petitioner," for there is no reason the State would make such a suggestion. Perhaps JUSTICE WHITE has become confused by the frequency with which the criminal defendant below is the petitioner here at the cert stage. One might think that, by now, everyone would be accustomed to having the criminal defendant be the respondent in a granted case.) } 1?

I do have one caveat with respect to everything I have said here. There are quite a few calls for footnotes, but our copy does not have the text of any footnotes. There may be some hidden problems. On the other hand, I hope that footnote 2 (the call is on page 1, line 6 from bottom, after "drug courier profile") will contain some helpful language on the role of the profile. The panel below thought the profile evidence constituted probable cause, 389 So.2d, at 1012, while the en banc Court of Appeal thought that profile evidence could not even constitute reasonable suspicion, id., at 1019. I hope the Court rejects both of those extremes, and explains how profile evidence may be used properly. } True
yes

Finally I have a number of technical errors. (The draft refers to the Florida Court of Appeals, for example, instead of the Florida Court of Appeal.) I can give these directly to JUSTICE WHITE's clerk.

lfp/ss 12/10/82 WHITER SALLY-POW

80-2136 Royer v. Florida

Dear Byron:

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

Although I still would join your judgment, I would find it difficult to join the opinion in its present form. Possibly our views are not entirely congruent as to investigative stops on reasonable or articulable suspicion. Although ^{you} cite Terry, Adams and Brignoni-Ponce (but not Summers), ^{and} I view these cases as ✓ establishing the principle of such a stop. We have characterized this in various terms. I think of it simply as an investigative stop. In Fourth Amendment

terminology, it is a temporary seizure for investigative purpose.

I thought this was the more important of the two issues in the case. There is a genuine need, in view of the confusion created by Mendenhall, to make clear that the use ^{at} of airports in the drug traffic presents special circumstances in which investigative stops on articulable and reasonable suspicion are entirely proper. This does not come through clearly from your draft.

5 let
Enclosed is memorandum in which I have tried to indicate generally the way I would approach this case. My concern, of course, is with the substance rather than any particular mode of expression.

Sincerely,

lfp/ss 12/10/82

MEMORANDUM

TO: Mike

DATE: Dec. 10, 1983

FROM: Lewis F. Powell, Jr.

81-2136 Royer

Justice White's opinion is not acceptable to me, and I agree with most - if not all - of your comments.

I would appreciate your drafting a memorandum for me to send Justice White. Rather than attempt cosmetic changes in his opinion, I would like to give him a memorandum that would - in effect - be the heart of an opinion (substantively) that we would write. I would say to him that if his opinion were revised substantially in accord with the views in my memo, I would gladly join him. Otherwise, I will write separately and join only the judgment.

I had rather switch my vote and find there was "consent" than to join BRW's opinion in its present form. Justice White agrees, and has said to me recently, that he could find "consent" to search the luggage, but goes the other way on a very "close call".

Your bench memo is essentially in accord with my thinking. Of course, the memo to Justice White must be very much condensed.

I start from the view, Mike, that we took this case hoping to have a Court opinion that would afford guidance particularly with respect to airport stops.

Byron's opinion could be written about generally similar facts anywhere. It is particularly opaque - and as you say "convoluted" in discussing what is critical for me: the right to make investigative stops in airports as an essential technique for curbing drug traffic. To be sure, the principle of an investigative stop should be consistently stated. But the circumstances in which the principle is applied have varied, and will continue to vary. In each situation, the principle is applied by a weighing of the rights of the individual to be free from police harassment against the societal interests that are implicated. These societal interests have varied in Terry (Adams was generally similar), Brignoni-Ponce, and in JPS's opinion in Summers. As indicated in my Mendenhall opinion, the societal interests with respect to the drug traffic - in the setting of an airport - is distinctive and important.

I note here that BRW's opinion does not mention Summers. Although the facts there were quite different, JPS's opinion may be the single best elaboration of the investigative stop principle: i.e., a sort of intermediate level "seizure" to permit further investigation.

The memorandum to be prepared, obviously, should address the two issues in this case that you identify: first, was the initial stop and questioning lawful; and, second, was there an arrest in the special circumstances of the "two on one" interrogation in the "closet", with the police in possession of the suspect's baggage and ticket?

You are familiar with my answers to both of these. There is a possible third question: did an arrest occur when Royer was asked to accompany the police to a private area for further interrogation. The short answer to this is that Royer consented, although given the reasonable suspicion that existed, I think the police certainly had the right to retain the luggage and the ticket until they could have the luggage ^{checked} by a "marijuana dog". It would be helpful if we could say this. I am not sure that it is necessary in this case.

L.F.P., Jr.

lfp/ss 12/10/82

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L.F.P., Jr.

Draft Memorandum to JUSTICE WHITE

No. 80-2146 -- Florida v. Royer

Mikes draft

Two issues are central in this case: the legality of the initial encounter between police and the respondent in the concourse and the legality of the encounter in the "closet" when the respondent gave his consent to the search. Although this case turns on the second issue, I think the first is more significant. I doubt we would have granted cert solely to review the Florida court's determination that these particular facts constituted an arrest.

The Initial Encounter

It is settled law *has repeatedly held*
The Court ~~has recognized~~ that a person who has not been "arrested" may nevertheless be "seized" within the meaning of the Fourth Amendment. "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 U.S. 1, 16 (1968). See also Michigan v. Summers, 452 U.S. 692 (1981); United States v. Cortez, 449 U.S. 411 (1981); Pennsylvania v. Mimms, 434 U.S. 106 (1977); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Adams v. Williams, 407 U.S. 143 (1972). Although such a "seizure" does not require probable cause, it does require "an articulable basis for suspecting criminal activity."

In the present case, there was a limited "seizure" (a Terry stop) in the airport concourse when the officers asked the respondent to accompany them after taking and keeping his plane ticket and driver's license. The case is similar to United

States v. Mendenhall, 446 U.S. 544 (1980), where the seizure question was "extremely close," id., at 560 n.1 (opinion of POWELL, J., concurring in part and concurring in the judgment). But here the indicia of seizure are significantly stronger. As in Mendenhall, the officers wore no uniforms, made no threats, and displayed no weapons. And as in Mendenhall, the respondent was not informed that he was free to refuse to cooperate. The significant difference is that Mendenhall's ticket and license were returned to her immediately. The Court specifically relies on this fact, 446 U.S., at 558, and ^{your} ~~the~~ dissent ^{notes} ~~singles out the fact~~ that the agents took her ticket and license "for a time" as "an objective facto[r] that would tend to support a 'seizure' finding," id., at 570 & n.3 (WHITE, J., dissenting). Here it is clear that the ticket was not returned to the respondent, and it appears that the license was simply placed with the respondent's other things after he emptied his pockets.

It is noteworthy that the officers' actions were not in accord with the DEA's standard instructions. The DEA Manual instructs the police in block capitals, "ALWAYS ADVISE THE SUSPECT THAT HE HAS A RIGHT TO REFUSE TO CONSENT TO A SEARCH." U.S. Dept. of Justice, Drug Enforcement Administration, Legal Problems in Airport Interceptions of Domestic Drug Couriers 61 (1980) [hereinafter cited as "DEA Manual"]. The Manual is only slightly less emphatic on tickets and identification: "Return ticket and/or ID immediately." Id., at 129 (emphasis in original). If the officers here had followed these instructions by returning the respondent's ticket and license immediately, this would be

less those symptoms are highly probative, but he can use a list of symptoms as an aid to exercising his independent professional judgment. The legitimacy of the decision depends not on the existence of a few symptoms, but on the quality of the doctor's judgment in the overall circumstances. The same is true for seizures based on "profile evidence." As the DEA reminds its agents, "Reasonable Suspicion will be established by what is in your head, not what may be written on paper somewhere." Id., at 152. There is nothing wrong with using a profile, but its limitations must be recognized--both by the agents in the field and by the courts. Whether there was probable cause or articulable suspicion should be determined using the traditional analysis, regardless of what legitimate investigative tools the officers used to develop their suspicions.

At the time the respondent was seized, the officers knew the following: (1) The respondent was nervous, apparently seeking to avoid detection. (2) The respondent was travelling from Miami to New York on a one-way ticket purchased with cash. (3) The respondent had two heavily laden American Tourister suitcases. (4) The respondent was travelling under an alias. Not only was his ticket in the name "Holt," but he had identified his luggage with the name "Holt." (5) The respondent did not put an address or telephone number on his luggage.

Standing alone, none of the factors is overwhelming, but most have some probative value. An experienced officer can tell the difference between "white knuckle flyer" nervousness and wrongdoer nervousness, but the courts should require him to ar-

ticulate his specific findings in each case. That was done here. The fourth factor is the most persuasive. It was clear that the respondent was trying to hide something from someone. The fifth factor also carries some weight. While many people do not wish to display their address and telephone number, they at least have baggage tags that allow the information to be obtained if necessary. The respondent obviously did not want his ownership of the bags established if they fell into official hands.

In sum, therefore, the officers seized the respondent, but this seizure was justified by their reasonable, articulable suspicion.

The Confinement in the Closet

We have held that a confinement short of a formal arrest may be "indistinguishable from a traditional arrest," Dunaway v. New York, 442 U.S. 200, 212 (1979), and thus require probable cause to support it. Thus far we have narrowly construed the Terry exception to this probable cause requirement. Here the police went beyond anything we have sanctioned under the exception. In addition to the factors that supported a finding of a seizure in the concourse, two additional factors were present: the police had seized the respondent's luggage, and they had moved him to the police room. He was still not told that he was free to refuse his cooperation, and his ticket and license were still not returned to him. In the total circumstances of the case, the confinement was therefore an "arrest."

As one of the officers conceded, this arrest was made without probable cause. Although the police had a reasonable suspicion that the respondent was carrying drugs, this did not rise to the level of probable cause. The most they could claim was probable cause to believe that he was doing something that he did not want to publicize, but there could have been any number of reasons for his fear of publicity. See DEA Manual 2 (Of 43 searches by LaGuardia Airport Unit in 1978, 16 resulted in drug seizures but 13 resulted in discovery of illegal aliens.); United States v. Bowles, 625 F.2d 526, 534 n.10 (CA5 1980) (22% of searches at Atlanta Airport during 7 months in 1977 produced evidence of criminal activity other than transporting narcotics).

In sum, therefore, the officers "arrested" the respondent, and the arrest was not justified by probable cause. Accordingly, his consent to the search of his luggage was not validly obtained.

lfp/ss 12/13/82

OK

SS

141

MEMORANDUM

80-2146 Florida v. Royer

This memorandum, stating my views on this case, will repeat - with a different emphasis - a good deal of what you have said.

The Investigative Stop

Of the two issues, I consider the legality of the initial encounter with the police to be by far the more significant. I thought we granted cert with the hope of getting a Court opinion on airport investigative stops. My recollection is that you and I both voted against granting in view of the presence of the second issue, i.e., the confrontation and search in the "closet". This issue is of no particular importance except to the parties in this case.

The Court has repeatedly held that a person who has not been "arrested" may nevertheless be "seized" briefly

within the meaning of the Fourth Amendment. "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 U.S. 1, 16 (1968). See also Michigan v. Summers, 452 U.S. 692 (1981)*; United States v. Cortez, 449 U.S. 411 (1981);

*why the
fresh here?*

*it may be
helpful to use it.*

*John's opinion in Summers, though addressing a different factual situation, has a rather good summary of the rationale of investigative seizures. You rely on Dunaway a good deal, but the police conduct there was far removed even from the "arrest" in this case. I ~~don't think Dunaway is relevant~~.

*This seems a bit strong.
I think Dunaway is
at least relevant on
the arrest issue,
although not on the
initial stop issue.
except perhaps in*

Fourth Amendment when the agents escorted her from the public area to the . . . office for questioning and a strip search". 446 U.S., at 574. As I read the various opinions in Mendenhall, there were five of us who thought the initial stop and questioning was lawful, though our reasons varied.

Until Royer found himself confronted in the "closet" away from the concourse, I think there was no question of unlawful conduct by the police. On the facts of this case, one could say that Royer had consented to the initial questioning, to exhibiting his ticket and identifications, and even to going with the police to a private room. I would say, however, in the setting of an airport - and given the extent to which drugs are moved from airport to airport by couriers - that trained agents (such as the DEA) ^epresumptively may rely on the "courier profile" to stop a suspect for identification. I agree that the "profile" in this case may ^vhave been less than compelling

up to the time the disparity in names was discovered. Yet, unless an officer can detain a suspected person for the minute or two necessary for identification, drug couriers will be coached simply to "walk away" and refuse to identify themselves. I am not suggesting that these modest stops may be made of everyone without any suspicion, but I would give experienced officers - in the ^{special} context of an airport - the benefit of doubt in most cases. Brignoni-Ponce supports a stop for identification.

*in the special context of
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move to X { If *in sum*, I therefore would hold that the officers were justified in stopping Royer for identification purposes, and that when the discrepancy in name appeared they also were justified in detaining him for further questioning.

The public interest in preventing drug traffic is great, and *that* 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

(It is quite a different environment from a street encounter with police where the suspect may be alone.)
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and air line employees always are close by. We all have to

go through the metal detectors, and *often we see people questioned.* ~~However~~ on one occasion 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.

I add here that the DEA manual instructs its agents to advise a suspect that he has a right to refuse to consent to a search, although I do not believe "search" is defined. The manual also instructs agents to return tickets and ID evidence immediately. Perhaps you will wish to cite the manual in a footnote as evidence of an appropriate - but not necessarily the only - procedure to be followed.

① → ~~In sum, I hope you will address this first issue~~
directly

The Search of the Suitcases

Your opinion quite satisfactorily discusses the "search" issue. As we have agreed in our several conversations, even this is a close question because of the trial court's findings of "consent", and the fact that Royer did agree. I am still willing - as Harry would say - "to go along" - with the view that Royer's agreement to the search was coerced under the circumstances you properly emphasize. But I would be hesitant to join an opinion, or perhaps even the judgment, unless we also said - more explicitly than your present draft - that at least until Royer arrived at the "closet" the officers were justified in what they did.

We should not permit people who travel under assumed names, and otherwise arguably meet the "drug courier profile", to walk away with their luggage. If a trained dog detects narcotics, the suspect could be held briefly to permit the obtaining of a warrant. The circumstances then

could be viewed as exigent, and an arrest on probable cause would be justified.

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The above memo is longer than I had contemplated. A good deal of what I have said is background for my own rather deeply held conviction that law enforcement should not be handicapped any more than the Constitution clearly requires in their effort to curb the narcotics traffic that is the major source of lawlessness in our country.

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(1981); Pennsylvania v. Mimms, 434 U.S. 106 (1977); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Adams v. Williams, 407 U.S. 143 (1972). Although such a "seizure" does not require probable cause, it does require "an articulable basis for suspecting criminal activity."

Although these principles are well settled, there has never been a Court opinion applying them in the special circumstances of an airport stop. Since Mendenhall, there has been more than a little confusion - a situation to which I am afraid my opinion contributed. You and I differed in Mendenhall as to whether there were sufficient articulable grounds for the initial stop and questioning. I thought that the grounds were adequate, and - unlike Potter - I considered this the special type of "seizure" that our prior cases commencing with Terry have recognized. Your ultimate position in Mendenhall was based primarily on the fact that "undoubtedly [she] was 'seized' within the meaning of the Fourth Amendment when the agents escorted her from the public area to the . . . office for questioning and a strip search". 446 U.S., at 574. As I read the various opinions in Mendenhall, there were five of us who thought the initial stop and questioning was lawful, though our reasons varied.

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L.F.P., Jr.

ss

L.F.P.

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 ultimately 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 one's 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

Reports dif. from streets

Fox (Ant Fla AG)

C/Apple of Fla. erred in not accepting DC findings

John notes that C/Apple found a concession by the State that Resko was not free to leave.

Frey (SG)

Issue was of great importance

Lower Ct applied wrong standard

- ~~the test~~ it overlooked def. but a "limited request" & an arrest.
(Nich v Summer)

~~There was~~

The "standard" was consented.

There was "reasonable suspicion
justifying investigation"

"Free to
leave"
is wrong
test.

Klein (Reck)

Deny any consent to open bags
No justification for request to
see ticket & driver's license.

Movement to private room could
have been ~~non~~ consensual.

"Lapse of time" is not determinative
- as in Summer

Need not reach "arrest" issue
at time of search. Can decide
on ground that consent to search
was coerced.

There were no grounds for
a Terry stop. Profile never
enough.

In Mendenhall, ticket was
handed back & no ~~returnable~~ ^{signature} of luggage

Can do a "dog sniff" of luggage.

~~If a~~

"OK to hold ticket during the
questioning on spot is OK"

These are
two imp.
points

Responding
to JPS

The Chief Justice

Rev.

Trial Ct found consent to open bag.

Royer was properly stopped & consented
to everything else

Justice Brennan

Aff'ns

Seizure maturely into an arrest.

Tickets & auto license ~~never~~ returned

Royer was not told he was free to
leave.

Assuming there was a valid Terry
stop, the sub. conduct violated 4th

Justice White

Aff'ns

The Ct applied properly rules of laws.

There was an arrest. Conceded Royer
was not free to go.

We may not be bound by this - in
mixed finding of law & fact.

Needn't get into Terry stop issue

Justice Marshall

Aff'm

Agree with WQB & BRW

Justice Blackmun

Rev.

** Trial judg. formed voluntary stop
& Clapper accepted this.*

*Drug trade as corrupts morals of other
country. In Mendenhall did it reach
"seizure" issue. **

*~~Agree~~ Agree there was a "seizure" here.
Suspect was not free to go when
stopped. * There was reasonable suspicion.*

*Whereas the "line" may be drawn,
that it went too far. ~~French~~ Police
asked*

Justice Powell

Aff'm

Rev

Agree with H.A.B.

There is a consent. Royer did not ask to leave.

Drug courier probable in imp.

Fla Ct was grievously erroneous.

Off m

Close to views of L.F.P.

Have to go thru the various steps. Properly are relevant. Officer may stop people & ask Qs. This is not a seizure. Terry.

But here (as I had said) the notion of consent is unrealistic when Royer was in the storage room, & officer had his baggage & tickets.

FBI Manual OK

Rev

There was consent all the way.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 15, 1982



RE: No. 81-2146 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 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

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

File

*At Byron's request,
I reviewed this prior
to circulation. He has
made substantial
revisions - chiefly in response to
1st DRAFT*

From: **Justice White**

Circulated: _____

Recirculated: _____

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

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-

*my
suggestions.*

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

aware of the attention he had attracted, purchased a one-way ticket to New York City and checked his two suitcases, placing on each suitcase an identification tag bearing the name "Holt" and the destination, "LaGuardia". As Royer made his way to the concourse which led to the airline boarding area, the two detectives approached him, identified themselves as policemen working out of the sheriff's office and asked if Royer had a "moment" to speak with them; Royer said "Yes".

Upon request, but without oral consent, Royer produced for the detectives his airline ticket and his driver's license. The airline ticket, like the baggage identification tags, bore the name "Holt," while the driver's license carried respondent's correct name, "Royer." When the detectives asked about the discrepancy, Royer explained that a friend had made the reservation in the name of "Holt." Royer became noticeably more nervous during this conversation, whereupon the detectives informed Royer that they were in fact narcotics investigators and that they had reason to suspect him of transporting narcotics.

The detectives did not return his airline ticket and identification but asked Royer to accompany them to a room, approximately forty feet away, adjacent to the concourse. Royer said nothing in response but went with the officers as he had been asked to do. The room was later described by Detective Johnson as a "large storage closet", located in the stewardess' lounge and containing a small desk and two chairs. Without Royer's consent or agreement, Detective Johnson, using Royer's baggage checks stubs, retrieved the "Holt" luggage from the airline and brought it to the room where respondent and Detective Magdalena were waiting.

vous, looking around at other people, e) Royer paid for his ticket in cash with a large number of bills, and f) rather than completing the airline identification tag to be attached to checked baggage, which had space for a name, address, and telephone number, Royer wrote only a name and the destination. 389 So. 2d, at 1016; App. 27A-40A.

Royer was asked if he would consent to a search of the suitcases. Without orally responding to this request, Royer produced a key and unlocked one of the suitcases, which the detective then opened without seeking further assent from Royer. Drugs were found in that suitcase. According to Detective Johnson, Royer stated that he did not know the combination to the lock on the second suitcase. When asked if he objected to the detective opening the second suitcase, Royer said "no, go ahead," and did not object when the detective explained that the suitcase might have to be broken open. The suitcase was pried open by the officers and more marijuana was found. Royer was then told that he was under arrest. Approximately fifteen minutes elapsed from the time the detectives initially approached respondent until his arrest upon the discovery of the contraband.

Prior to his trial for felony possession of marijuana,³ Royer made a motion to suppress the evidence obtained in the search of the suitcases. The trial court found that Royer's consent to the search was "freely and voluntarily given," and that, regardless of the consent, the warrantless search was reasonable because "the officer doesn't have the time to run out and get a search warrant because the plane is going to take off."⁴ Following the denial of the motion to suppress, Royer changed his plea from "not guilty" to "nolo contendere," specifically reserving the right to appeal the denial of the motion to suppress.⁵ Royer was convicted.

The District Court of Appeal, sitting en banc, reversed Royer's conviction.⁶ The court held that Royer had been in-

³ Fla. Stat. § 893.13(1)(a)(2) (1975).

⁴ The trial court's decision on the motion to suppress, App. 114A-116A, is unreported.

⁵ Under Florida law, a plea of nolo contendere is equivalent to a plea of guilty.

⁶ On appeal, a panel of the District Court of Appeal of Florida, Third District, found that viewing the totality of the circumstances, the finding of consent by the trial court was supported by clear and convincing evidence. 389 So. 2d 1007 (Fla. App. 1979). The panel decision was vacated and re-

voluntarily confined within the small room without probable cause; that the involuntary detention had exceeded the limited restraint permitted by *Terry v. Ohio*, 392 U. S. 1 (1968), at the time his consent to the search was obtained, and that the consent to search was therefore invalid because tainted by the unlawful confinement.⁷

Several factors led the court to conclude that respondent's confinement was tantamount to arrest. Royer had "found himself in a small enclosed area being confronted by two police officers—a situation which presents an almost classic definition of imprisonment." 389 So. 2d 1015, 1018 (Fla. App. 1980). The detectives' statement to Royer that he was suspected of transporting narcotics also bolstered the finding that Royer was "in custody" at the time the consent to search was given. *Ibid.* In addition, the detectives' possession of Royer's airline ticket and their retrieval and possession of his luggage made it clear, in the District Court of Appeal's view, that Royer was not free to leave. *Ibid.*

At the suppression hearing Royer testified that he was under the impression that he was not free to leave the officers' presence. The Florida Court of Appeal found that this apprehension "was much more than a well-justified subjective belief," for the State had conceded at oral argument before that court that "the officers would not have permitted Royer to leave the room even if [Royer] had erroneously

hearing en banc granted. 389 So. 2d 1015 (Fla. App. 1980). It is the decision of the en banc court that is reviewed here.

The Florida court was also of the opinion that "a mere similarity with the contents of the drug courier profile is insufficient even to constitute the articulable suspicion required to justify" the stop authorized by *Terry v. Ohio*, 392 U. S. 1 (1968). It went on to hold that even if it followed a contrary rule, or even if articulable suspicion occurred at some point prior to Royer's consent to search, the facts did not amount to probable cause that would justify the restraint imposed on Royer. Supp. App. to Pet. for Cert. 51-52. As will become clear, we disagree on the reasonable-suspicion issue but do concur that probable cause to arrest was lacking.

thought he could." *Ibid.* The nomenclature used to describe Royer's confinement, the court found, was unimportant because under *Dunaway v. New York*, 442 U. S. 200 (1979), "[a] police confinement which . . . goes beyond the limited restraint of a *Terry* investigatory stop may be constitutionally justified only by probable cause." 389 So. 2d, at 1019. Detective Johnson, who conducted the search, had specifically stated at the suppression hearing that he did not have probable cause to arrest Royer until the suitcases were opened and their contents revealed. *Ibid.* In the absence of probable cause, the court concluded, Royer's consent to search, given only after he had been unlawfully confined, was ineffective to justify the search. *Ibid.* Because there was no proof at all that a "break in the chain of illegality" had occurred, the court found that Royer's consent was invalid as a matter of law. *Id.*, at 1020. We granted the State's petition for certiorari, 454 U. S. 1079 (1981), and now affirm.

probable
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II

Some preliminary observations are in order. First, it is unquestioned that without a warrant to search Royer's luggage and in the absence of exigent circumstances, the validity of the search depended on Royer's purported consent. Neither is it disputed that where the validity of a search rests on consent, the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority. *Lo-Ji Sales, Inc. v. New York*, 442 U. S. 319, 329 (1979); *Schneckloth v. Bustamonte*, 412 U. S. 218, 233-234 (1973); *Bumper v. North Carolina*, 391 U. S. 543, 548-549 (1968); *Johnson v. United States*, 333 U. S. 10, 13 (1948); *Amos v. United States*, 255 U.S. 313, 317 (1921).

Second, law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing

to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. See *Dunaway v. New York*, 442 U. S. 200, 210 n. 12 (1979); *Terry v. Ohio*, 392 U. S. 1, 31, 32-33 (1968) (Harlan, J., concurring); *id.*, at 34 (WHITE, J., concurring). Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. *United States v. Mendenhall*, 446 U. S. 544, 555 (1980) (opinion of Stewart, J.). The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. *Terry v. Ohio*, *supra*, at 32-33 (Harlan, J., concurring); *id.*, at 34 (WHITE, J., concurring). He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. *United States v. Mendenhall*, *supra*, at 556 (opinion of Stewart, J.). If, however, there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.

Third, it is also clear that not all seizures of the person must be justified by probable cause to arrest for a crime. Prior to *Terry v. Ohio*, *supra*, any restraint on the person amounting to a seizure for the purposes of the Fourth Amendment was invalid unless justified by probable cause. *Dunaway v. New York*, 442 U. S. 200, 207-209 (1979). *Terry* created a limited exception to this general rule: certain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person has committed or is about to commit a crime. In that case, a stop and a frisk for weapons were found unexceptionable. *Adams v. Williams*, 407 U. S. 143 (1972), applied the same approach in the context of an informant's report that an unnamed individual, in a nearby vehicle was carrying narcotics and a gun. Although not expressly authorized in *Terry*, *United States v. Brignoni-*

Ponce, 422 U. S. 873, 881-882 (1975), was unequivocal in saying that reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of questioning limited to the purpose of the stop. In *Brignoni-Ponce*, that purpose was to verify or dispel the suspicion that the immigration laws were being violated, a governmental interest that was sufficient to warrant temporary detention for limited questioning. Royer does not suggest, nor do we, that a similar rationale would not warrant temporary detention for questioning on less than probable cause where the public interest involved is the suppression of illegal transactions in drugs or of any other serious crime.

Michigan v. Summers, 452 U. S. 692 (1981), involved another circumstance in which a temporary detention on less than probable cause satisfied the ultimate test of reasonableness under the Fourth Amendment. There the occupant of a house was detained while a search warrant for the house was being executed. We held that the warrant made the occupant sufficiently suspect to justify his temporary seizure. The "limited intrusion on the personal security" of the person detained was justified "by such substantial law enforcement interests" that the seizure could be made on articulable suspicion not amounting to probable cause. *Id.*, at 699.

Fourth, *Terry* and its progeny nevertheless created only limited exceptions to the general rule that seizures of the person require probable cause to arrest. Detentions may be "investigative" yet violative of the Fourth Amendment absent probable cause. In the name of investigating a person who is no more than suspected of criminal activity, the police may not carry out a full search of the person or of his automobile or other effects. Nor may the police seek to verify their suspicions by means that approach the conditions of arrest. *Dunaway v. New York*, *supra*, made this clear. There, the suspect was taken to the police station from his home and, without being formally arrested, interrogated for an hour. The resulting incriminating statements were held inadmissi-

ble: reasonable suspicion of crime is insufficient to justify custodial interrogation even though the interrogation is investigative. *Id.*, at 211-212. *Brown v. Illinois*, 422 U. S. 590 (1975), and *Davis v. Mississippi*, 394 U. S. 721 (1969), are to the same effect.

The Fourth Amendment's prohibition against unreasonable searches and seizures has always been interpreted to prevent a search which is not limited to the particularly described "place to be searched, and the persons or things to be seized," U. S. Const., Amend. IV, even if the search is based upon probable cause. The Amendment's protection is not diluted in those situations where it has been determined that legitimate law enforcement interests justify a warrantless search: the search must be limited in scope to that which is justified by the particular purposes served by the exception. For example, a warrantless search is permissible incident to a lawful arrest because of legitimate concerns for the safety of the officer and to prevent the destruction of evidence by the arrestee. *E. g.*, *Chimel v. California*, 395 U. S. 752, 763 (1969). Nevertheless, such a search is limited to the person of the arrestee and the area immediately within his control. *Id.*, at 762. *Terry v. Ohio*, *supra*, also embodies this principle: "The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." 392 U. S., at 19. The reasonableness requirement of the Fourth Amendment requires no less when the police action is a seizure permitted on less than probable cause because of legitimate law enforcement interests. The scope of the detention must be carefully tailored to its underlying justification.

The predicate permitting seizures on suspicion short of probable cause is that law enforcement interests warrant a limited intrusion on the personal security of the suspect. The scope of the intrusion permitted will, of course, vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: an investigative detention must be temporary and last no longer than is neces-

sary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. See, e.g., *United States v. Brignoni-Ponce*, 422 U. S., at 881-882; *Adams v. Williams*, 407 U. S., at 146. It is, of course, the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.

Fifth, *Dunaway* and *Brown* hold that statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will. *Dunaway v. New York*, 442 U. S., at 218-219; *Brown v. Illinois*, *supra*, at 601-602. In this respect those cases reiterated one of the principal holdings of *Wong Sun v. United States*, 371 U. S. 471 (1963).

Sixth, if the events in this case amounted to no more than a permissible police encounter in a public place or a justifiable *Terry*-type detention, Royer's consent to search his luggage, if voluntary, would have been effective to legalize the search of his two suitcases. Cf. *United States v. Watson*, 423 U. S. 411, 424-425 (1976). The Court of Appeals in the case before us, however, concluded not only that Royer had been seized when he gave his consent to search his luggage but also that the bounds of an investigative stop had been exceeded. In its view the "confinement" in this case went beyond the limited restraint of a *Terry* investigative stop, and Royer's consent was thus tainted by the illegality, a conclusion that required reversal in the absence of probable cause to arrest. The question before us is whether the record warrants that conclusion. We think that it does.

III

The State proffers three reasons for holding that when Royer consented to the search of his luggage, he was not being illegally detained. First, it is submitted that the en-

tire encounter was consensual and hence Royer ⁰he was not being held against his will at all. We find this submission untenable. Asking for and examining Royer's ticket and his driver's license were no doubt permissible in themselves, but when the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment. These circumstances surely amount to a show of official authority such that "a reasonable person would have believed he was not free to leave." *United States v. Mendenhall*, 446 U. S. 544, 554 (Opinion of Stewart, J.).

Second, the State submits that if Royer was seized, there existed reasonable, articulable suspicion to justify a temporary detention and that the limits of a *Terry*-type stop were never exceeded. We agree with the State that when the officers discovered that Royer was travelling under an assumed name, this fact, and the facts already known to the officers—paying cash for a one-way ticket, the mode of checking the two bags, and Royer's appearance and conduct in general—were adequate grounds for suspecting Royer of carrying drugs and for temporarily detaining him and his luggage while they attempted to verify or dispel their suspicions in a manner that did not exceed the limits of an investigative detention. We also agree that had Royer voluntarily consented to the search of his luggage while he was justifiably being detained on reasonable suspicion, the products of the search would be admissible against him. We have concluded, however, that at the time Royer produced the key to his suitcase, the detention to which he was then subjected was a severe intrusion on his personal liberty, more serious than is allowable on mere suspicion of criminal activity.

By the time Royer was informed that the officers wished to examine his luggage, he had identified himself when ap-

proached by the officers and had attempted to explain the discrepancy between the name shown on his identification and the name under which he had purchased his ticket and identified his luggage. Obviously, the officers were not satisfied, for they informed him they were narcotics agents and had reason to believe that he was carrying illegal drugs. They requested him to accompany them to the police room. Royer went with them. He found himself in a small room—a large closet—equipped with a desk and two chairs. He was alone with two police officers who again told him that they thought he was carrying narcotics. He also found that the officers, without his consent, had retrieved his checked luggage from the airlines. Obviously, what had begun as a consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions. The officers had Royer's ticket, they had his identification, and they had seized his luggage. It was never suggested to Royer that he was free to board his plane if he so chose, and he reasonably believed that he was being detained. At least as of that moment, any consensual aspects of the encounter had evaporated, and we cannot fault the Florida Court of Appeal in concluding that *Terry v. Ohio* and the cases following it did not justify the restraint to which Royer was then subjected. As a practical matter, Royer was under arrest. Consistent with this conclusion, the State conceded in the Florida courts that Royer would not have been free to leave the interrogation room had he asked to do so.⁶ Furthermore, the state's brief in this Court interprets the testimony of the officers at the suppression hearing as indicating that had Royer refused to consent to a search of his luggage, the officers would have held the lug-

⁶ In its brief and at oral argument before this Court, the State contests whether this concession was ever made. We have no basis to question the statement of the Florida court.

gage and sought a warrant to authorize the search. Brief for Petitioner 6.⁹

We also doubt that the prosecution in this case has satisfactorily demonstrated that it employed the least intrusive means to pursue its suspicions. First, by returning his

⁹ Our decision here is consistent with the Court's judgment in *United States v. Mendenhall*, 446 U. S. 544 (1980). In *Mendenhall*, the respondent was walking along an airport concourse when she was approached by two federal Drug Enforcement Agency (DEA) officers. As in the present case, the officers asked for Mendenhall's airline ticket and some identification; the names on the ticket and identification did not match. When one of the agents specifically identified himself as attached to the DEA, Mendenhall became visibly shaken and nervous. 446 U. S., at 548.

After returning the ticket and identification, one officer asked Mendenhall if she would accompany him to the DEA airport office, 50 feet away for further questions. Once in the office, Mendenhall was asked to consent to a search of her person and her handbag; she was advised of her right to decline. *Id.*, at 548. In a private room following further assurance from Mendenhall that she consented to the search, a policewoman began the search of Mendenhall's person by requesting that Mendenhall disrobe. As she began to undress, Mendenhall removed two concealed packages that appeared to contain heroin and handed them to the policewoman. *Id.*, at 549. The Court of Appeals determined that the initial "stop" of Mendenhall was unlawful because not based upon a reasonable suspicion of criminal activity. In the alternative, the court found that even if the initial stop was permissible, the officer's request that Mendenhall accompany him to the DEA office constituted an arrest without probable cause.

This Court reversed. Two Justices were of the view that the entire encounter was consensual and that no seizure had taken place. Three other Justices assumed that there had been a seizure but held that there was reasonable suspicion to warrant it; hence a voluntary consent to search was a valid basis for the search. Thus, the five Justices voting to reverse appeared to agree that Mendenhall was not being illegally detained when she consented to be searched. The four dissenting Justices also assumed that there had been a detention but were of the view that reasonable grounds for suspecting Mendenhall did not exist and concluded that Mendenhall was thus being illegally detained at the time of her consent.

The case before us differs in important respects. Here, Royer's ticket and identification remained in the possession of the officers throughout the encounter; the officers also seized and had possession of his luggage. As a practical matter, Royer could not leave the airport without them. In

ticket and driver's license, and informing him that he was free to go if he so desired, the officers may have obviated any claim that the encounter was anything but a consensual matter from start to finish. Second, there are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention, such as from an airport concourse to a more private area. Cf. *Pennsylvania v. Mimms*, 434 U. S. 106, 109-111 (1977) (*per curiam*). There is no indication in this case that such reasons prompted the officers to transfer the site of the encounter from the concourse to the interrogation room. It appears, rather, that the primary interest of the officers was not in having an extended conversation with Royer but in the contents of his luggage, a matter which the officers did not pursue orally with Royer until after the encounter was relocated to the police room. The record does not reflect any facts which would support a finding that the legitimate law enforcement purposes which justified the detention in the first instance were furthered by removing Royer to the police room prior to the officer's attempt to gain his consent to a search of his luggage. As we have noted, had Royer 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. If the search proved negative, Royer would have been free to go much earlier and with less likelihood of missing his flight, which in itself can be a very serious matter in a variety of circumstances.

Third, the State has not touched on the question whether it would have been feasible to investigate the contents of

Mendenhall, no luggage was involved, the ticket and identification were immediately returned, and the officers were careful to advise that the suspect could decline to be searched. Here, the officers had seized Royer's luggage and made no effort to advise him that he need not consent to the search.

Royer's bags in a more expeditious way. The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage.¹⁰ There is no indication here that this means was not feasible and available. If it had

¹⁰ Courts of Appeals are in disagreement as to whether using a dog to detect drugs in luggage is a search, but no Court of Appeals has held that more than an articulable suspicion is necessary to justify this kind of a warrantless search if indeed it is a search. See *e. g.*, *United States v. Sullivan*, 625 F. 2d 9, 13 (CA4 1980) (no search), cert. denied, 450 U. S. 923 (1981); *United States v. Burns*, 624 F. 2d 95, 101 (CA10 1980) (same); *United States v. Beale*, 674 F. 2d 1327, 1335 (CA9 1982) (sniff is an intrusion requiring reasonable suspicion), cert. pending, No. 82-674. Furthermore, the law of the circuit from which this case comes was and is that "use of [drug-detecting canines] constitute[s] neither a search nor a seizure under the Fourth Amendment." *United States v. Goldstein*, 635 F. 2d 356, 361 (CA5), cert. denied, 452 U. S. 962 (1981). See *United States v. Viera*, 644 F. 2d 509, 510 (CA5), cert. denied, 454 U. S. 867 (1981). Decisions of the United States Court of Appeals for the Fifth Circuit rendered prior to September 30, 1981, are binding precedent on the United States Court of Appeals for the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F. 2d 1206, 1207 (CA11 1981).

In any event, we hold here that the officers had reasonable suspicion to believe that Royer's luggage contained drugs, and we assume that the use of dogs in the investigation would not have entailed any prolonged detention of either Royer or his luggage which may involve other Fourth Amendment concerns. See *United States v. Place*, 660 F. 2d 44 (CA1 1981), cert. granted, No. 81-1617, — U. S. — (1982). In *United States v. Beale*, *supra*, for example, after briefly questioning two suspects who had checked baggage for a flight from the Ft. Lauderdale, Florida, airport, the officers proceeded to the baggage area where a trained dog alerted to one of the checked bags. Meanwhile, the suspects had boarded their plane for California, where their bags were again sniffed by a trained dog and they were arrested. The Court of Appeals for the Ninth Circuit vacated a judgment convicting the suspects on the ground that articulable suspicion was necessary to justify the use of a trained dog to sniff luggage and that the existence or not of that requirement should have been determined in the District Court. 674 F. 2d, at 1335. In the case before us, 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.

been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out. Indeed, it may be that no detention at all would have been necessary. A negative result would have freed Royer in short order; a positive result would have resulted in his justifiable arrest on probable cause.

We do not suggest that there is a litmus-paper test for distinguishing a consensual encounter from a seizure or for determining when a seizure exceeds the bounds of an investigative stop. Even in the discrete category of airport encounters, there will be endless variations in the facts and circumstances, so much variation that it is unlikely that the courts can reduce to a sentence or a paragraph a rule that will provide unarguable answers to the question whether there has been an unreasonable search or seizure in violation of the Fourth Amendment. Nevertheless, we must render judgment, and we think that the Florida Court of Appeal cannot be faulted in concluding that the limits of a *Terry*-stop had been exceeded.

IV

The State's third and final argument is that Royer was not being illegally held when he gave his consent because there was probable cause to arrest him at that time. Officer Johnson testified at the suppression hearing and the Florida Court of Appeal held that there was no probable cause to arrest until Royer's bags were opened, but the fact that the officers did not believe there was probable cause and proceeded on a consensual or *Terry*-stop rationale would not foreclose the State from justifying Royer's custody by proving probable cause and hence removing any barrier to relying on Royer's consent to search. *Peters v. New York*, decided with *Sibron v. New York*, 392 U. S. 40, 66-67 (1968). We agree with the Florida Court of Appeal, however, that there was no probable cause to arrest Royer at the time he purported to give his consent to the search of his luggage. The

facts are that a nervous young man with two American Tourister bags paid cash for an airline ticket to a "target city". These facts led to inquiry, which in turn revealed that the ticket had been bought under an assumed name. The proffered explanation did not satisfy the officers. We cannot agree with the State, if this is its position, that every nervous young man paying cash for a ticket to New York City under an assumed name and carrying two heavy American Tourister bags may be arrested and held to answer for a serious felony charge.

V

Because we affirm the Florida Court of Appeal's conclusion that Royer was being illegally detained when he consented to the search of his luggage, we agree that the consent was tainted by the illegality and was ineffective to justify the search. The judgment of the Florida Court of Appeal is accordingly

Affirmed.

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

LJP

See my notes
on the copy
B.R.W. asked me
to read. He has
substantially met
concerns.

From: Justice White

Circulated: 1/4/83

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2146

Join
1/5

FLORIDA, PETITIONER v. MARK ROYER

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

[January —, 1982]

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-

¹The 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.

²The "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-

aware of the attention he had attracted, purchased a one-way ticket to New York City and checked his two suitcases, placing on each suitcase an identification tag bearing the name "Holt" and the destination, "LaGuardia". As Royer made his way to the concourse which led to the airline boarding area, the two detectives approached him, identified themselves as policemen working out of the sheriff's office and asked if Royer had a "moment" to speak with them; Royer said "Yes".

Upon request, but without oral consent, Royer produced for the detectives his airline ticket and his driver's license. The airline ticket, like the baggage identification tags, bore the name "Holt," while the driver's license carried respondent's correct name, "Royer." When the detectives asked about the discrepancy, Royer explained that a friend had made the reservation in the name of "Holt." Royer became noticeably more nervous during this conversation, whereupon the detectives informed Royer that they were in fact narcotics investigators and that they had reason to suspect him of transporting narcotics.

The detectives did not return his airline ticket and identification but asked Royer to accompany them to a room, approximately forty feet away, adjacent to the concourse. Royer said nothing in response but went with the officers as he had been asked to do. The room was later described by Detective Johnson as a "large storage closet", located in the stewardess' lounge and containing a small desk and two chairs. Without Royer's consent or agreement, Detective Johnson, using Royer's baggage checks stubs, retrieved the "Holt" luggage from the airline and brought it to the room where respondent and Detective Magdalena were waiting.

vous, looking around at other people, e) Royer paid for his ticket in cash with a large number of bills, and f) rather than completing the airline identification tag to be attached to checked baggage, which had space for a name, address, and telephone number, Royer wrote only a name and the destination. 389 So. 2d, at 1016; App. 27A-40A.

Royer was asked if he would consent to a search of the suitcases. Without orally responding to this request, Royer produced a key and unlocked one of the suitcases, which the detective then opened without seeking further assent from Royer. Drugs were found in that suitcase. According to Detective Johnson, Royer stated that he did not know the combination to the lock on the second suitcase. When asked if he objected to the detective opening the second suitcase, Royer said "no, go ahead," and did not object when the detective explained that the suitcase might have to be broken open. The suitcase was pried open by the officers and more marijuana was found. Royer was then told that he was under arrest. Approximately fifteen minutes elapsed from the time the detectives initially approached respondent until his arrest upon the discovery of the contraband.

Prior to his trial for felony possession of marijuana,³ Royer made a motion to suppress the evidence obtained in the search of the suitcases. The trial court found that Royer's consent to the search was "freely and voluntarily given," and that, regardless of the consent, the warrantless search was reasonable because "the officer doesn't have the time to run out and get a search warrant because the plane is going to take off."⁴ Following the denial of the motion to suppress, Royer changed his plea from "not guilty" to "nolo contendere," specifically reserving the right to appeal the denial of the motion to suppress.⁵ Royer was convicted.

The District Court of Appeal, sitting en banc, reversed Royer's conviction.⁶ The court held that Royer had been in-

³ Fla. Stat. § 893.13(1)(a)(2) (1975).

⁴ The trial court's decision on the motion to suppress, App. 114A-116A, is unreported.

⁵ Under Florida law, a plea of *nolo contendere* is equivalent to a plea of guilty.

⁶ On appeal, a panel of the District Court of Appeal of Florida, Third District, found that viewing the totality of the circumstances, the finding of consent by the trial court was supported by clear and convincing evidence. 389 So. 2d 1007 (Fla. App. 1979). The panel decision was vacated and re-

voluntarily confined within the small room without probable cause; that the involuntary detention had exceeded the limited restraint permitted by *Terry v. Ohio*, 392 U. S. 1 (1968), at the time his consent to the search was obtained, and that the consent to search was therefore invalid because tainted by the unlawful confinement.¹

Several factors led the court to conclude that respondent's confinement was tantamount to arrest. Royer had "found himself in a small enclosed area being confronted by two police officers—a situation which presents an almost classic definition of imprisonment." 389 So. 2d 1015, 1018 (Fla. App. 1980). The detectives' statement to Royer that he was suspected of transporting narcotics also bolstered the finding that Royer was "in custody" at the time the consent to search was given. *Ibid.* In addition, the detectives' possession of Royer's airline ticket and their retrieval and possession of his luggage made it clear, in the District Court of Appeal's view, that Royer was not free to leave. *Ibid.*

At the suppression hearing Royer testified that he was under the impression that he was not free to leave the officers' presence. The Florida Court of Appeal found that this apprehension "was much more than a well-justified subjective belief," for the State had conceded at oral argument before that court that "the officers would not have permitted Royer to leave the room even if [Royer] had erroneously

hearing en banc granted. 389 So. 2d 1015 (Fla. App. 1980). It is the decision of the en banc court that is reviewed here.

¹The Florida court was also of the opinion that "a mere similarity with the contents of the drug courier profile is insufficient even to constitute the articulable suspicion required to justify" the stop authorized by *Terry v. Ohio*, 392 U. S. 1 (1968). It went on to hold that even if it followed a contrary rule, or even if articulable suspicion occurred at some point prior to Royer's consent to search, the facts did not amount to probable cause that would justify the restraint imposed on Royer. Supp. App. to Pet. for Cert. 51-52. As will become clear, we disagree on the reasonable-suspicion issue but do concur that probable cause to arrest was lacking.

thought he could." *Ibid.* The nomenclature used to describe Royer's confinement, the court found, was unimportant because under *Dunaway v. New York*, 442 U. S. 200 (1979), "[a] police confinement which . . . goes beyond the limited restraint of a *Terry* investigatory stop may be constitutionally justified only by probable cause." 389 So. 2d, at 1019. Detective Johnson, who conducted the search, had specifically stated at the suppression hearing that he did not have probable cause to arrest Royer until the suitcases were opened and their contents revealed. *Ibid.* In the absence of probable cause, the court concluded, Royer's consent to search, given only after he had been unlawfully confined, was ineffective to justify the search. *Ibid.* Because there was no proof at all that a "break in the chain of illegality" had occurred, the court found that Royer's consent was invalid as a matter of law. *Id.*, at 1020. We granted the State's petition for certiorari, 454 U. S. 1079 (1981), and now affirm.

II

Some preliminary observations are in order. First, it is unquestioned that without a warrant to search Royer's luggage and in the absence of exigent circumstances, the validity of the search depended on Royer's purported consent. Neither is it disputed that where the validity of a search rests on consent, the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority. *Lo-Ji Sales, Inc. v. New York*, 442 U. S. 319, 329 (1979); *Schneckloth v. Bustamonte*, 412 U. S. 218, 233-234 (1973); *Bumper v. North Carolina*, 391 U. S. 543, 548-549 (1968); *Johnson v. United States*, 333 U. S. 10, 13 (1948); *Amos v. United States*, 255 U.S. 313, 317 (1921).

Second, law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing

to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. See *Dunaway v. New York*, 442 U. S. 200, 210 n. 12 (1979); *Terry v. Ohio*, 392 U. S. 1, 31, 32-33 (1968) (Harlan, J., concurring); *id.*, at 34 (WHITE, J., concurring). Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. *United States v. Mendenhall*, 446 U. S. 544, 555 (1980) (opinion of Stewart, J.). The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. *Terry v. Ohio*, *supra*, at 32-33 (Harlan, J., concurring); *id.*, at 34 (WHITE, J., concurring). He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. *United States v. Mendenhall*, *supra*, at 556 (opinion of Stewart, J.). If, however, there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.

Third, it is also clear that not all seizures of the person must be justified by probable cause to arrest for a crime. Prior to *Terry v. Ohio*, *supra*, any restraint on the person amounting to a seizure for the purposes of the Fourth Amendment was invalid unless justified by probable cause. *Dunaway v. New York*, 442 U. S. 200, 207-209 (1979). *Terry* created a limited exception to this general rule: certain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person has committed or is about to commit a crime. In that case, a stop and a frisk for weapons were found unexceptionable. *Adams v. Williams*, 407 U. S. 143 (1972), applied the same approach in the context of an informant's report that an unnamed individual, in a nearby vehicle was carrying narcotics and a gun. Although not expressly authorized in *Terry*, *United States v. Brignoni-*

Ponce, 422 U. S. 873, 881-882 (1975), was unequivocal in saying that reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of questioning limited to the purpose of the stop. In *Brignoni-Ponce*, that purpose was to verify or dispel the suspicion that the immigration laws were being violated, a governmental interest that was sufficient to warrant temporary detention for limited questioning. Royer does not suggest, nor do we, that a similar rationale would not warrant temporary detention for questioning on less than probable cause where the public interest involved is the suppression of illegal transactions in drugs or of any other serious crime.

Michigan v. Summers, 452 U. S. 692 (1981), involved another circumstance in which a temporary detention on less than probable cause satisfied the ultimate test of reasonableness under the Fourth Amendment. There the occupant of a house was detained while a search warrant for the house was being executed. We held that the warrant made the occupant sufficiently suspect to justify his temporary seizure. The "limited intrusion on the personal security" of the person detained was justified "by such substantial law enforcement interests" that the seizure could be made on articulable suspicion not amounting to probable cause. *Id.*, at 699.

Fourth, *Terry* and its progeny nevertheless created only limited exceptions to the general rule that seizures of the person require probable cause to arrest. Detentions may be "investigative" yet violative of the Fourth Amendment absent probable cause. In the name of investigating a person who is no more than suspected of criminal activity, the police may not carry out a full search of the person or of his automobile or other effects. Nor may the police seek to verify their suspicions by means that approach the conditions of arrest. *Dunaway v. New York*, *supra*, made this clear. There, the suspect was taken to the police station from his home and, without being formally arrested, interrogated for an hour. The resulting incriminating statements were held inadmissi-

ble: reasonable suspicion of crime is insufficient to justify custodial interrogation even though the interrogation is investigative. *Id.*, at 211-212. *Brown v. Illinois*, 422 U. S. 590 (1975), and *Davis v. Mississippi*, 394 U. S. 721 (1969), are to the same effect.

The Fourth Amendment's prohibition against unreasonable searches and seizures has always been interpreted to prevent a search which is not limited to the particularly described "place to be searched, and the persons or things to be seized," U. S. Const., Amend. IV, even if the search is based upon probable cause. The Amendment's protection is not diluted in those situations where it has been determined that legitimate law enforcement interests justify a warrantless search: the search must be limited in scope to that which is justified by the particular purposes served by the exception. For example, a warrantless search is permissible incident to a lawful arrest because of legitimate concerns for the safety of the officer and to prevent the destruction of evidence by the arrestee. *E. g.*, *Chimel v. California*, 395 U. S. 752, 763 (1969). Nevertheless, such a search is limited to the person of the arrestee and the area immediately within his control. *Id.*, at 762. *Terry v. Ohio*, *supra*, also embodies this principle: "The scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." 392 U. S., at 19. The reasonableness requirement of the Fourth Amendment requires no less when the police action is a seizure permitted on less than probable cause because of legitimate law enforcement interests. The scope of the detention must be carefully tailored to its underlying justification.

The predicate permitting seizures on suspicion short of probable cause is that law enforcement interests warrant a limited intrusion on the personal security of the suspect. The scope of the intrusion permitted will, of course, vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: an investigative detention must be temporary and last no longer than is neces-

sary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. See, e.g., *United States v. Brignoni-Ponce*, 422 U. S., at 881-882; *Adams v. Williams*, 407 U. S., at 146. It is, of course, the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.

Fifth, *Dunaway* and *Brown* hold that statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will. *Dunaway v. New York*, 442 U. S., at 218-219; *Brown v. Illinois*, *supra*, at 601-602. In this respect those cases reiterated one of the principal holdings of *Wong Sun v. United States*, 371 U. S. 471 (1963).

Sixth, if the events in this case amounted to no more than a permissible police encounter in a public place or a justifiable *Terry*-type detention, Royer's consent to search his luggage, if voluntary, would have been effective to legalize the search of his two suitcases. Cf. *United States v. Watson*, 423 U. S. 411, 424-425 (1976). The Court of Appeals in the case before us, however, concluded not only that Royer had been seized when he gave his consent to search his luggage but also that the bounds of an investigative stop had been exceeded. In its view the "confinement" in this case went beyond the limited restraint of a *Terry* investigative stop, and Royer's consent was thus tainted by the illegality, a conclusion that required reversal in the absence of probable cause to arrest. The question before us is whether the record warrants that conclusion. We think that it does.

III

The State proffers three reasons for holding that when Royer consented to the search of his luggage, he was not being illegally detained. First, it is submitted that the en-

tire encounter was consensual and hence Royer ~~he~~ was not being held against his will at all. We find this submission untenable. Asking for and examining Royer's ticket and his driver's license were no doubt permissible in themselves, but when the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment. These circumstances surely amount to a show of official authority such that "a reasonable person would have believed he was not free to leave." *United States v. Mendenhall*, 446 U. S. 544, 554 (Opinion of Stewart, J.).

Second, the State submits that if Royer was seized, there existed reasonable, articulable suspicion to justify a temporary detention and that the limits of a *Terry*-type stop were never exceeded. We agree with the State that when the officers discovered that Royer was travelling under an assumed name, this fact, and the facts already known to the officers—paying cash for a one-way ticket, the mode of checking the two bags, and Royer's appearance and conduct in general—were adequate grounds for suspecting Royer of carrying drugs and for temporarily detaining him and his luggage while they attempted to verify or dispel their suspicions in a manner that did not exceed the limits of an investigative detention. We also agree that had Royer voluntarily consented to the search of his luggage while he was justifiably being detained on reasonable suspicion, the products of the search would be admissible against him. We have concluded, however, that at the time Royer produced the key to his suitcase, the detention to which he was then subjected was a severe intrusion on his personal liberty, more serious than is allowable on mere suspicion of criminal activity.

By the time Royer was informed that the officers wished to examine his luggage, he had identified himself when ap-

proached by the officers and had attempted to explain the discrepancy between the name shown on his identification and the name under which he had purchased his ticket and identified his luggage. Obviously, the officers were not satisfied, for they informed him they were narcotics agents and had reason to believe that he was carrying illegal drugs. They requested him to accompany them to the police room. Royer went with them. He found himself in a small room—a large closet—equipped with a desk and two chairs. He was alone with two police officers who again told him that they thought he was carrying narcotics. He also found that the officers, without his consent, had retrieved his checked luggage from the airlines. Obviously, what had begun as a consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions. The officers had Royer's ticket, they had his identification, and they had seized his luggage. It was never suggested to Royer that he was free to board his plane if he so chose, and he reasonably believed that he was being detained. At least as of that moment, any consensual aspects of the encounter had evaporated, and we cannot fault the Florida Court of Appeal in concluding that *Terry v. Ohio* and the cases following it did not justify the restraint to which Royer was then subjected. As a practical matter, Royer was under arrest. Consistent with this conclusion, the State conceded in the Florida courts that Royer would not have been free to leave the interrogation room had he asked to do so.³ Furthermore, the state's brief in this Court interprets the testimony of the officers at the suppression hearing as indicating that had Royer refused to consent to a search of his luggage, the officers would have held the lug-

³ In its brief and at oral argument before this Court, the State contests whether this concession was ever made. We have no basis to question the statement of the Florida court.

gage and sought a warrant to authorize the search. Brief for Petitioner 6.⁹

We also doubt that the prosecution in this case has satisfactorily demonstrated that it employed the least intrusive means to pursue its suspicions. First, by returning his

⁹Our decision here is consistent with the Court's judgment in *United States v. Mendenhall*, 446 U. S. 544 (1980). In *Mendenhall*, the respondent was walking along an airport concourse when she was approached by two federal Drug Enforcement Agency (DEA) officers. As in the present case, the officers asked for Mendenhall's airline ticket and some identification; the names on the ticket and identification did not match. When one of the agents specifically identified himself as attached to the DEA, Mendenhall became visibly shaken and nervous. 446 U. S., at 548.

After returning the ticket and identification, one officer asked Mendenhall if she would accompany him to the DEA airport office, 50 feet away for further questions. Once in the office, Mendenhall was asked to consent to a search of her person and her handbag; she was advised of her right to decline. *Id.*, at 548. In a private room following further assurance from Mendenhall that she consented to the search, a policewoman began the search of Mendenhall's person by requesting that Mendenhall disrobe. As she began to undress, Mendenhall removed two concealed packages that appeared to contain heroin and handed them to the policewoman. *Id.*, at 549. The Court of Appeals determined that the initial "stop" of Mendenhall was unlawful because not based upon a reasonable suspicion of criminal activity. In the alternative, the court found that even if the initial stop was permissible, the officer's request that Mendenhall accompany him to the DEA office constituted an arrest without probable cause.

This Court reversed. Two Justices were of the view that the entire encounter was consensual and that no seizure had taken place. Three other Justices assumed that there had been a seizure but held that there was reasonable suspicion to warrant it; hence a voluntary consent to search was a valid basis for the search. Thus, the five Justices voting to reverse appeared to agree that Mendenhall was not being illegally detained when she consented to be searched. The four dissenting Justices also assumed that there had been a detention but were of the view that reasonable grounds for suspecting Mendenhall did not exist and concluded that Mendenhall was thus being illegally detained at the time of her consent.

The case before us differs in important respects. Here, Royer's ticket and identification remained in the possession of the officers throughout the encounter; the officers also seized and had possession of his luggage. As a practical matter, Royer could not leave the airport without them. In

ticket and driver's license, and informing him that he was free to go if he so desired, the officers may have obviated any claim that the encounter was anything but a consensual matter from start to finish. Second, there are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention, such as from an airport concourse to a more private area. Cf. *Pennsylvania v. Mimms*, 434 U. S. 106, 109-111 (1977) (*per curiam*). There is no indication in this case that such reasons prompted the officers to transfer the site of the encounter from the concourse to the interrogation room. It appears, rather, that the primary interest of the officers was not in having an extended conversation with Royer but in the contents of his luggage, a matter which the officers did not pursue orally with Royer until after the encounter was relocated to the police room. The record does not reflect any facts which would support a finding that the legitimate law enforcement purposes which justified the detention in the first instance were furthered by removing Royer to the police room prior to the officer's attempt to gain his consent to a search of his luggage. As we have noted, had Royer 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. If the search proved negative, Royer would have been free to go much earlier and with less likelihood of missing his flight, which in itself can be a very serious matter in a variety of circumstances.

Third, the State has not touched on the question whether it would have been feasible to investigate the contents of

Mendenhall, no luggage was involved, the ticket and identification were immediately returned, and the officers were careful to advise that the suspect could decline to be searched. Here, the officers had seized Royer's luggage and made no effort to advise him that he need not consent to the search.

been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out. Indeed, it may be that no detention at all would have been necessary. A negative result would have freed Royer in short order; a positive result would have resulted in his justifiable arrest on probable cause.

We do not suggest that there is a litmus-paper test for distinguishing a consensual encounter from a seizure or for determining when a seizure exceeds the bounds of an investigative stop. Even in the discrete category of airport encounters, there will be endless variations in the facts and circumstances, so much variation that it is unlikely that the courts can reduce to a sentence or a paragraph a rule that will provide unarguable answers to the question whether there has been an unreasonable search or seizure in violation of the Fourth Amendment. Nevertheless, we must render judgment, and we think that the Florida Court of Appeal cannot be faulted in concluding that the limits of a *Terry*-stop had been exceeded.

IV

The State's third and final argument is that Royer was not being illegally held when he gave his consent because there was probable cause to arrest him at that time. Officer Johnson testified at the suppression hearing and the Florida Court of Appeal held that there was no probable cause to arrest until Royer's bags were opened, but the fact that the officers did not believe there was probable cause and proceeded on a consensual or *Terry*-stop rationale would not foreclose the State from justifying Royer's custody by proving probable cause and hence removing any barrier to relying on Royer's consent to search. *Peters v. New York*, decided with *Sibron v. New York*, 392 U. S. 40, 66-67 (1968). We agree with the Florida Court of Appeal, however, that there was no probable cause to arrest Royer at the time he purported to give his consent to the search of his luggage. The

facts are that a nervous young man with two American Tourister bags paid cash for an airline ticket to a "target city". These facts led to inquiry, which in turn revealed that the ticket had been bought under an assumed name. The proffered explanation did not satisfy the officers. We cannot agree with the State, if this is its position, that every nervous young man paying cash for a ticket to New York City under an assumed name and carrying two heavy American Tourister bags may be arrested and held to answer for a serious felony charge.

V

Because we affirm the Florida Court of Appeal's conclusion that Royer was being illegally detained when he consented to the search of his luggage, we agree that the consent was tainted by the illegality and was ineffective to justify the search. The judgment of the Florida Court of Appeal is accordingly

Affirmed.

January 5, 1983

80-2146 Florida v. Royer

Dear Byron:

Please join me.

Sincerely,

Justice White

lfp/as

cc: The Conference

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,

WW

Justice White

cc: The Conference

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 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

[Handwritten flourish]

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

7

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, :

Bill
WJB, Jr.

Justice White

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.

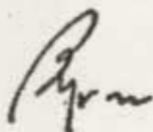
Hence, I think Royer was seized on the concourse, but I also think that by that time the officers had reasonable suspicion to believe that Royer was carrying drugs and could temporarily detain him. They then exceeded the speed limit for Terry stops, hence tainting Royer's consent to search.

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

bc: ✓ Justice Powell and Justice Stevens

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 8, 1983

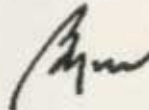
Re: 80-2146: Florida v. Royer

Dear Lewis and John,

Since you two have joined the circulating draft in Royer, I am taking the liberty of sending to you Bill Brennan's letter to me and my response. As I said to Bill, I think he and I are at issue. I am reluctant to agree with the views about seizures that Bill expresses in his letter, and I would much rather say what I say than to leave the matter up in the air.

Since these encounters go on every day in many places in the country, it is important to give some guidance, and I will regret it if there is not a court for giving the police as much room as the circulating draft gives them. Of course, if the three of us stay put, and the Justices who voted to reverse would give the police even more rein, it will be clear enough that drug enforcement officers can go at least as far as the three of us think they can. It may also be that if the draft is further broken down into discrete parts, some of the Justices on the other side will find some things in which they can join.

Sincerely yours,



✓Justice Powell

Justice Stevens

cpm

↑
*This is what
I assumed was
going to happen
all the time.*

Mike

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

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).

See
my
letter
to B R W
2/9

See n 6 p 7

The opinion likewise loses sight of the very sound admonition made more than 40 years ago in *Brinegar v. United States*, 338 U. S. 160 (1949), and oft quoted since that time, that "[t]he rule of probable cause is a practical, nontechnical conception." *Id.*, at 176.

Analyzed simply in terms of its "reasonableness" as that term is used in the Fourth Amendment, the conduct of the investigating officers toward Royer would pass muster with virtually all thoughtful, civilized persons not overly steeped in the mysteries of this Court's Fourth Amendment jurisprudence. Analyzed even in terms of the most meticulous regard for our often conflicting cases, it seems to me to pass muster equally well.

I

The facts of this case, which are doubtless typical of those facing narcotics officers in major airports throughout the country, may be usefully stated in a somewhat different manner than that followed in the opinion of the Court. Officers Magdalena and Johnson, members of the "Smuggling Detail" of the Dade County Public Safety Department created in response to a growing drug problem at the Miami Airport, were on duty at that airport on January 3, 1978. Since this is one of the peak periods of the tourist season in South Florida and the Caribbean, we may presumably take judicial notice that the airport was in all probability very crowded and busy at that time.

The detectives first saw Royer walking through the airport concourse. He was a young man, casually dressed, carrying two heavily-laden suitcases. The officers described him as nervous in appearance, and looking around in a manner which suggested that he was trying to detect and avoid police officers. Before they approached him, the officers followed Royer to a ticket counter. He there requested a ticket for New York City, and in paying for it produced a large roll of cash in small denomination bills from which he peeled off the

necessary amount. He then affixed two baggage tags to his luggage and checked it. Rather than filling out his full name, address, and phone number in the spaces provided on the tags, Royer merely wrote the words "Holt" and "La Guardia" on each tag.

At this point, the officers approached Royer, identified themselves, and asked if he had a moment to talk. He answered affirmatively, and the detectives then asked to see his airline ticket and some identification.¹ Although his ticket was for the name "Holt," his driver's license was in the name of "Mark Royer." When asked to explain this discrepancy, he said that a friend named Holt had made the ticket reservation. This explanation, of course, did not account for his use of the name "Holt" on the baggage tags which he had just filled out.

By this time Royer had become all the more obviously nervous. The detectives told Royer that they suspected he was transporting narcotics, and asked if he would accompany them for further questioning to a room adjacent to the concourse "to get out of the general population of the Airport." — So. 2d —, — (Fla. 3d Dist. Ct. App. En Banc 1981). Royer agreed to go. The room was no more than 40 feet from the ticket counter; it was described in the testimony of one of the officers as a "large storage closet" off a stewardess' lounge converted into a room used by the Smuggling Detail, *id.*, at —; the room contained a desk and two chairs. At this time the detectives also, without Royer's consent, retrieved Royer's suitcases from the place where they had been checked through on the flight to New York and brought them to the room off the concourse.

Once inside, the detectives asked Royer if he would consent to a search of the luggage so that they could dispel or

¹The Court recites these facts by noting that while Royer "produced" the ticket and identification, he did so "without oral consent." *Ante*, at 2. See note 2, *infra*.

confirm their suspicion that he was smuggling narcotics. The Court's opinion describes what then happened in a masterpiece of circumlocution:

"Without orally responding to this request, Royer produced a key and unlocked one of the suitcases, which the detective then opened without seeking further assent from Royer. Drugs were found in that suitcase. According to Detective Johnson, Royer stated that he did not know the combination to the lock on the second suitcase. When asked if he objected to the detective opening the second suitcase, Royer said, 'no, go ahead,' and did not object when the detective explained that the suitcase might have to be broken open. The suitcase was pried open by the officers and more marijuana was found. Royer was then told that he was under arrest. Approximately fifteen minutes elapsed from the time the detectives initially approached respondent until his arrest upon the discovery of the contraband." *Ante*, at 3.²

The Court inferentially concedes, as of course it must, that at the time the suitcases were opened and 65 pounds of marijuana were disclosed, the officers had probable cause to arrest and detain Royer. But working backward through this very brief encounter, the Court manages to sufficiently fault the officers' conduct so as to require that Royer's conviction for smuggling drugs be set aside. Analyzed in terms of the "reasonableness" which must attend any search and seizure under the requirements of the Fourth Amendment, I find it impossible to conclude that any step in the officers' efforts to apprehend Royer fails to meet that test.

² Why it should make the slightest difference that Royer did not "orally" consent to the opening of the first bag, when in response to the request by the officers that he consent to a search Royer produced a key and unlocked it, is one of the many opaque nuances of the Court's opinion.

The Court concedes that when the officers first approached Royer, they had "grounds for suspecting Royer of carrying drugs and for temporarily detaining him and his luggage while they attempted to verify or dispel their suspicions" *Ante*, at 10. See also *Michigan v. Summers*, 452 U. S. 692, 697-700 (1981); *Adams v. Williams*, 407 U. S. 143, 146 (1972); *Terry v. Ohio*, 392 U. S. 1, 20-21 (1968). I agree that their information reached at least this level.² The detectives had learned, among other things, that (1) Royer was carrying two heavy suitcases; (2) he was visibly nervous, exhibiting the behavior of a person trying to identify and evade police officers; (3) at a ticket counter in a major import center for illicit drugs, he had purchased a ticket for a city that is a major distribution center for such drugs; (4) he paid for his ticket from a large roll of small denomination bills, avoiding the need to show identification; (5) in filling out his baggage tags, Royer listed only a last name and the airport of destination, failing to give his full name, address, and phone

²I also agree with the Court's intimation that when the detectives first approached and questioned Royer, no seizure occurred and thus the constitutional safeguards of the Fourth Amendment were not invoked. *Ante*, at 6. "[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U. S. 1, 19, n. 16 (1968). See also *United States v. Mendenhall*, 446 U. S. 544, 551-557 (1980) (Stewart, J., announcing the judgment of the Court); *id.*, at 560, n. 1 (POWELL, J., concurring in part); *United States v. Herbst*, 641 F. 2d 1161, 1166 (CA5), cert. denied, 454 U. S. 851 (1981); *United States v. Berd*, 634 F. 2d 979, 984-985 (CA5 1981); *United States v. Turner*, 628 F. 2d 461, 462-465 (CA5 1980), cert. denied, 451 U. S. 988 (1981); *United States v. Hill*, 626 F. 2d 429, 432-433, and n. 6 (CA5 1980); *United States v. Fry*, 622 F. 2d 1218, 1220-1221 (CA5 1980); *United States v. Elmore*, 595 F. 2d 1036, 1038-1042 (CA5 1979), cert. denied, 447 U. S. 910 (1980). But, since the detectives had a reasonable suspicion that Royer was involved in criminal activity, the encounter was permissible even under Fourth Amendment standards.

number in the provided spaces.⁴

The Florida court felt that even these facts did not amount to articulable suspicion, reasoning that this behavior was "at least equally, and usually far more frequently, consistent with complete innocence."⁵ — So. 2d, at —. This evaluation of the evidence seems to me singularly akin to observing that because a stranger who was loitering near a building shortly before an arsonist set fire to the building

⁴The facts of this case bear a strong resemblance to those we examined in *United States v. Mendenhall*, 446 U. S. 544 (1980). In that case, DEA agents in the Detroit Metropolitan Airport observed Mendenhall as she was the last passenger to deplane from a flight originating in Los Angeles. Once inside the terminal, Mendenhall, who appeared very nervous, slowly scanned the populace of the concourse and then walked very slowly toward the baggage area. Rather than claim any baggage, however, Mendenhall asked for directions to the Eastern Airlines ticket counter. At the counter, which was located in another terminal, Mendenhall, who carried an American Airlines ticket for a flight from Detroit to Pittsburgh, asked for an Eastern Airlines ticket for the same trip. Before Mendenhall could board the Eastern Airlines flight, agents stopped her for questioning. Three members of this Court concluded that, based on these observations, agents had a reasonable suspicion which justified the stop. *Id.*, at 560-565 (POWELL, J., concurring in part). Two members of the Court did not reach the question, finding instead that Mendenhall had never been "seized." *Id.*, at 546-557 (Stewart, J., delivering the judgment of the Court). To the extent that the present case differs from *Mendenhall*, the basis for a reasonable suspicion is stronger on the facts before us now.

⁵The Florida District Court of Appeal took specific exception to the officers' conclusion that Royer appeared to be nervously attempting to evade police contact. The lower court said that since police officers are not psychiatrists, this conclusion "must be completely disregarded." — So. 2d, at —, n. 4. This Court, however, has repeatedly emphasized that a trained police officer may draw inferences and make deductions that could elude any untrained person observing the same conduct. See, e. g., *United States v. Cortez*, 449 U. S. 411, 418 (1981). We have noted as an example the behavior of a suspect who appears to the officer to be evading police contact. See, e. g., *United States v. Mendenhall*, 446 U. S., at 564 (Stewart, J., delivering the judgment of the Court); *United States v. Brignoni-Ponce*, 422 U. S. 873, 884-885 (1975).

could not be detained against his will for questioning solely on the basis of that fact, the same conclusion would be reached even though the same stranger had been found loitering in the presence of four other buildings shortly before arsonists had likewise set them on fire. Any one of these factors relied upon by the Miami police may have been as consistent with innocence as with guilt; but the combination of several of these factors is the essence of both "articulable suspicion" and "probable cause."⁶

⁶ While the Court does not address the use of "drug courier profiles" in narcotics investigations, it affirms a decision where the Florida District Court of Appeal took the liberty to fashion a bright-line rule with regard to the use of these profiles. The state court concluded that conformity with a "drug courier profile," "without more," is insufficient to establish even reasonable suspicion that criminal activity is afoot. — So. 2d, at — n. 6.

In 1974 the Department of Justice Drug Enforcement Administration instituted training programs for its narcotics officers wherein instruction was given on a "drug courier profile." A "profile" is, in effect, the collective or distilled experience of narcotics officers concerning characteristics repeatedly seen in drug smugglers. As one DEA agent explained:

"Basically its a number of characteristics which we attribute or which we believe can be used to pick out drug couriers. And these characteristics are basically things that normal travelers do not do Essentially, when we started this detail at the airport, we didn't really know what we were looking for. The majority of our cases, when we first started, involved cases we made based on information from law enforcement agencies or from airline personnel. And as these cases were made, certain characteristics were noted among the defendants. At a later time we began to see a pattern in these characteristics and began using them to pick out individuals we suspected as narcotic couriers without any prior information." *United States v. McClain*, 452 F. Supp. 195, 199 (E.D. Mich. 1977).

Few statistics have been kept on the effectiveness of "profile" usage, but the data available suggests it has been a success. In the first few months of a "profile" program at the Detroit Metropolitan Airport, 141 persons were searched in 96 different encounters; drugs were discovered in 77 of the searches. See *United States v. Van Lewis*, 409 F. Supp. 535, 538 (E.D. Mich. 1976), *aff'd*, 556 F. 2d 385 (CA6 1977), *cert denied*, 434 U. S. 1011 (1980). A DEA agent working at the La Guardia Airport in New York City estimated that some sixty percent of the persons identified as

The point at which I part company with the Court's opinion is in the assessment of the reasonableness of the officers' conduct following their initial conversation with Royer. The Court focuses on the transfer of the place of the interview

having "profile" characteristics are found to be carrying drugs. *United States v. Price*, 599 F. 2d 494, 501, n. 8 (CA2 1979).

Because of this success, state and local law enforcement agencies also have instructed narcotics officers according to "drug courier profiles." It was partly on the basis of "profile" characteristics that Detectives Johnson and Magdalena initially began surveillance of Royer. Certainly in this case the use of the "profile" proved effective.

Use of "drug courier profiles" has played an important part in a number of lower court decisions. See, e. g., *United States v. Forero-Rincon*, 626 F. 2d 218 (CA2 1980); *United States v. Vasquez*, 612 F. 2d 1338 (CA2 1979), cert. denied, 447 U. S. 907 (1980); *United States v. Price*, 599 F. 2d 494 (CA2 1979); *United States v. Diaz*, 503 F. 2d 1025 (CA3 1974); *United States v. Sullivan*, 625 F. 2d 9 (CA4 1980), cert. denied, 450 U. S. 923 (1981); *United States v. Hill*, 626 F. 2d 429 (CA5 1980); *United States v. Ballard*, 573 F. 2d 913 (CA5 1978); *United States v. Smith*, 574 F. 2d 882 (CA6 1978); *United States v. Scott*, 545 F. 2d 38 (CA8 1976), cert. denied 429 U. S. 1066 (1977); *United States v. Beck*, 598 F. 2d 497 (CA9 1979). In fact, the function of the "profile" has been somewhat overplayed. Certainly, a law enforcement officer can rely on his own experience in detection and prevention of crime. Likewise, in training police officers, instruction focuses on what has been learned through the collective experience of law enforcers. The "drug courier profile" is an example of such instruction. It is not intended to provide a mathematical formula that automatically establishes grounds for a belief that criminal activity is afoot. By the same reasoning, however, simply because these characteristics are accumulated in a "profile," they are not to be given less weight in assessing whether a suspicion is well founded. While each case will turn on its own facts, sheer logic dictates that where certain characteristics repeatedly are found among drug smugglers, the existence of those characteristics in a particular case is to be considered accordingly in determining whether there are grounds to believe that further investigation is appropriate. Cf. *United States v. Cortez*, 449 U. S. 411, 418 (1981).

The "drug courier profile" is not unfamiliar to this Court. We have held that conformity with certain aspects of the "profile" does not automatically create a particularized suspicion which will justify an investigatory stop. *Reid v. Georgia*, 448 U. S. 438 (1980) (per curiam). Yet our deci-

from the main concourse of the airport to the room off the concourse and observes that Royer "found himself in a small room—a large closet—equipped with a desk and two chairs. He was alone with two police officers who again told him that they thought he was carrying narcotics. He also found that the officers, without his consent, had retrieved his checked luggage from the airlines." *Ante*, at 11.

Obviously, this quoted language is intended to convey stern disapproval of the described conduct of the officers. To my mind, it merits no such disapproval and was eminently reasonable. Would it have been preferable for the officers to have detained Royer for further questioning, as they concededly had a right to do, without paying any attention to the fact that his luggage had already been checked on the flight to New York, and might be put aboard the flight even though Royer himself was not on the plane? Would it have been more "reasonable" to interrogate Royer about the contents of his suitcases, and to seek his permission to open the suitcases when they were retrieved, in the busy main concourse of the Miami Airport, rather than to find a room off the concourse where the confrontation would surely be less embarrassing to Royer? If the room had been large and spacious, rather

sion in *United States v. Mendenhall*, 446 U. S. 544 (1980), made it clear that a police officer is entitled to assess the totality of the circumstances in the light of his own training and experience and that instruction on a "drug courier profile" would be a part of his accumulated knowledge. This process is not amenable to bright-line rules such as the Florida court tried to establish. We are not dealing

"with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *United States v. Cortez*, 449 U. S., at 418. See also *Brown v. Texas*, 443 U. S. 47, 52, n. 2 (1979).

than small, if it had possessed three chairs rather than two, would the officers' conduct have been made reasonable by these facts?

The Court's answers to these questions, to the extent that it attempts any, are scarcely satisfying. It commences with the observation that it doubts "that the prosecution in this case has satisfactorily demonstrated that it employed the least intrusive means to pursue its suspicions." *Ante*, at 12. Earlier in its opinion, this familiar principle of First Amendment law is suddenly carried over into Fourth Amendment law by the citation of two cases, *United States v. Brignoni-Ponce*, 422 U. S. 873, 881-882 (1975), and *Adams v. Williams*, 407 U. S., at 146, neither one of which lends any support to the principle as a part of Fourth Amendment law. The Court goes on to say that had the officers returned Royer's ticket and driver's license, the encounter clearly would have been consensual. The Court also states that while there were good reasons to justify moving Royer from one location to another, the officers' motives in seeking to examine his luggage renders these reasons unavailing—a conclusion the reason for which wholly escapes me. Finally, the Court suggests that the officers might have examined Royer's bags in a more expeditious way, such as the use of trained dogs.

All of this to my mind adds up to little more than saying that if my aunt were a man, she would be my uncle. The officers might have taken different steps than they did to investigate Royer, but the same may be said of virtually every investigative encounter that has more than one step to it. The question we must decide is what was *unreasonable* about the steps which *these officers* took with respect to *this* suspect in the Miami Airport on this particular day. On this point, the Court stutters, fudges, and hedges:

"Obviously, what had begun as a consensual inquiry in a public place had escalated into an investigatory proce-

ture in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions." *Ante*, at 11.

Obviously. But since even the Court concedes that there was articulable suspicion warranting an investigatory detention, the fact that the inquiry had become an "investigatory procedure in a police interrogation room" would seem to have little bearing on the proper disposition of a claim that the officers violated the Fourth Amendment. The Court goes on to say:

"At least as of that moment, any consensual aspects of the encounter had evaporated, and we cannot fault the Florida Court of Appeal in concluding that *Terry v. Ohio* and the cases following it did not justify the restraint to which Royer was then subjected. As a practical matter, Royer was under arrest." *Ibid*.

Does the Court intimate that if the Florida Court of Appeal had reached the opposite conclusion with respect to the holdings of *Terry* and the cases which follow it, it would affirm that holding?⁷ Does it mean that the 15-minute duration of the total encounter, and the even lesser amount of elapsed time during which Royer was in the "interrogation room," was more than a "*Terry*" investigative stop can ever consume? These possible conclusions are adumbrated, but not stated; if the Court's opinion were to be judged by standards appropriate to Impressionist paintings, it would perhaps receive a high grade, but the same cannot be said if it is to be

⁷ See also *ante*, at 9 ("The question before us is whether the record warrants that conclusion."); *ante*, at 15 ("[W]e think that the Florida Court of Appeal cannot be faulted in concluding that the limits of a *Terry*-stop had been exceeded.). Certainly we owe no such deference to the Florida court's conclusion. See *Haynes v. Washington*, 373 U. S. 503, 515-516 (1963) (quoting *Stein v. New York*, 346 U. S. 156, 181 (1953)); *Fiske v. Kansas*, 274 U. S. 380, 385-386 (1927).

judged by the standards of a judicial opinion.

Since the Court concedes the existence of "articulable suspicion" at the time of the officers' first conversation with Royer, the only remaining question is whether the detention of Royer during that period of time was permissible under the rule enunciated in *Terry v. Ohio*, 392 U. S. 1 (1968). Although *Terry* itself involved only a protective pat down for weapons, subsequent cases have expanded the permissible scope of such a "seizure." In *Adams v. Williams*, 407 U. S. 143 (1972), we upheld both a search and seizure of a pistol being carried by a suspect seated in a parked automobile. In *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976), we allowed government officials to stop, and divert for visual inspection and questioning, automobiles which were suspected of harboring illegal aliens. These stops, including waiting time, could clearly have approximated in length the time which Royer was detained, and yet *Martinez-Fuerte* allowed them to be made "in the absense of any individualized suspicion at reasonably located checkpoints." 428 U. S., at 562 (emphasis supplied). Unless we are to say that commercial drug trafficking is somehow quantitatively less weighty on the Fourth Amendment scale than trafficking in the illegal aliens, I think the articulable suspicion which concededly focused upon Royer justified the length and nature of his detention.

The reasonableness of the officers' activity in this case did not depend on Royer's consent to the investigation. Nevertheless, the presence of consent further justifies the action taken. The Court does not seem to dispute that Royer consented to go to the room in the first instance. Certainly that conclusion is warranted by the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U. S. 218, 227 (1973). The facts are similar to those addressed in *United States v. Mendenhall*, 446 U. S. 544 (1980), where a majority of the Court determined that consent to accompany police officers had been voluntary. Royer was not told that he had to go to the

room, but was simply asked, after a brief period of questioning, if he would accompany the detectives to the room. Royer was informed as to why the officers wished to question him further. There were neither threats nor any show of force. Detectives Johnson and Magdalena were not in uniform and did not display weapons. The detectives did not touch Royer and made no demands. In fact, Royer admits that the detectives were quite polite.⁸

The Court concludes that somewhere between the beginning of the 40 foot journey and the resumption of conversation in the room the investigation became so intrusive that Royer's consent "evaporated" leaving him "[a]s a practical matter . . . under arrest." *Ante*, at 11. But if Royer was legally approached in the first instance and consented to accompany the detectives to the room, it does not follow that his consent went up in smoke and he was "arrested" upon entering the room. As we made clear in *Mendenhall*, logical analysis would focus on whether the environment in the room rendered the subsequent consent to a search of the luggage involuntary.

As we said in *Mendenhall*, "the fact that she was [in the room] is little or no evidence that she was in any way coerced." 446 U. S., at 559. Other than the size of the room, described as "a large storage closet,"⁹ there is nothing in the

⁸ Contrary to the Florida court's view, this phase of the encounter contrasts sharply with the circumstances we examined in *Dunaway v. New York*, 442 U. S. 200 (1979). In that case, police officers deliberately sought out the suspect at a neighbor's house and, with a show of force, brought the suspect to police headquarters in a police car, placed him in an interrogation room, and questioned him extensively after giving him a *Miranda* warning. Unlike in *Dunaway*, Royer, after brief questioning, was asked to cooperate by accompanying the officers to a room no more than 40 feet away, so that the questioning could proceed out of the view of the general public.

⁹ The characterization of the room as a "closet" is quite misleading. The room contained one desk and two chairs. It was large enough to allow

record which would indicate that Royer's resistance was overborne by anything about the room. Royer, who was in his fourth year of study at Ithaca College at the time and has since graduated with a degree in *communications*, simply continued to cooperate with the detectives as he had from the beginning of the encounter. Absent any evidence of objective indicia of coercion, and even absent any claim of such indicia by Royer, the size of the room itself does not transform a voluntary consent to search into a coerced consent.

But even if I am wrong in my conclusion that Royer's detention did not exceed the bounds of a permissible *Terry* stop, I am satisfied that the officers possessed probable cause to arrest Royer at the conclusion of their initial conversation with him. The most comprehensive definition of "probable cause" which I can find in our cases is that contained in *Brinegar v. United States*:

"The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.' *McCarthy v. De Armit*, 99 Pa. St. 63, 69, quoted with approval in the *Carroll* opinion. 267 U. S. at 161. And this 'means less than evidence which would justify condemnation' or conviction, as Marshall, C.J., said for the Court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their [the offi-

three persons to enter with two heavy suitcases. It also is relevant that it was the Florida court, not Royer, who focused on the size of the room. Royer appealed his conviction arguing that his consent to a search was invalid as a matter of law because he was not informed that he could refuse consent. A panel of the Florida court properly rejected this contention relying on *Schneekloth v. Bustamonte*, 412 U. S. 218, 234 (1973), where we said that "proof of knowledge of a right to refuse [is not] the *sine qua non* of an effective consent to a search." It was during rehearing by the court *en banc* that the conviction was reversed with a divided court finding that when Royer was taken into the private room he was in effect placed under arrest.

cers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Carroll v. United States*, 267 U. S. 132, 162." 338 U. S., at 175 (footnotes omitted).

Even before approaching Royer to talk to him, the detectives knew that he was carrying two heavy suitcases, and that he was visibly nervous, exhibiting the behavior of a person trying to evade any encounters with police officers. At a ticket counter in a major import center for illicit drugs, Miami, he had purchased a ticket for a city that is a major distribution center for such drugs, New York. He paid for his ticket from a large roll of small denomination bills, thus avoiding the need to show any identification. In filling out his baggage tags, Royer listed only a last name and the airport of destination, thus evidencing his unwillingness to supply his full name, address, and phone number as indicated on the tag.

When approached by the detectives, the driver's license which Royer showed them was in the name of "Mark Royer," even though the baggage was checked in the name of "Holt." Royer's explanation was that a friend named Holt had made the ticket reservation. While this might account for the ticket being held in the name of one Holt, it did not in any way account for Royer's use of only the last name "Holt" on the baggage information tag, or his refusal to fill in the first name, address, and telephone number required on the tag. The officers were thereby fully justified in concluding that Royer had intended to check and ship the two bags under an assumed name. As he tried to give his explanation, Royer became even more nervous.

In my opinion, giving some weight to the judgments of trained law enforcement officers attached to the Miami Smuggling Detail, these officers, although they obviously had "less than evidence which would justify condemnation,"


Locke v. United States, 7 Cranch 339, 348 (1813), did have "a reasonable ground for belief of guilt," *Brinegar v. United States*, 338 U. S., at 175. Thus when applying this rule in the "practical, nontechnical" way that *Brinegar* instructs, it must be concluded that the officers had probable cause to arrest Royer at the moment they requested that he go to the room off the concourse.

For any of these several reasons, I would reverse the judgment of the Florida District Court of Appeal.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 10, 1983

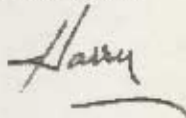


Re: No. 80-2146 - Florida v. Royer

Dear Byron and Bill:

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

Sincerely,



Justice White
Justice Rehnquist

cc: The Conference

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, particularly by DEA agents.

Sincerely,

Justice White

lfp/ss

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,

A handwritten signature in cursive script, appearing to read "Sandra", is written below the word "Sincerely,".

Justice Rehnquist

Copies to the Conference

CHAMBERS OF
THE CHIEF JUSTICE

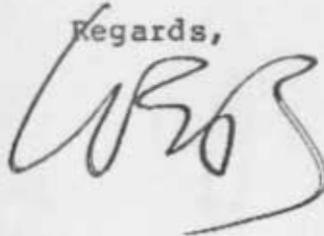
February 17, 1983

RE: 81-2146 - Florida v. Royer

Dear Bill:

I join your dissent.

Regards,

A handwritten signature in dark ink, appearing to be "WRB", written over the typed word "Regards,".

Justice Rehnquist

Copies to the Conference

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,

Jm.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1983

PERSONAL

Re: 81-2146 - Florida v. Royer

Dear Lewis:

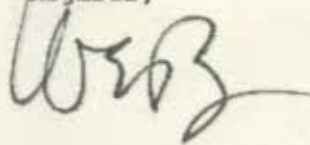
I have re-read the opinions in this case, and I entertain the hope you will decide not to stay with the proposed Court's opinion - one that is giving Bill Brennan pause.

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

lfp/ss 02/28/83

ROYERC SALLY-POW

81-2146 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 of 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

February 28, 1983

PERSONAL

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Sincerely,

The Chief Justice

lfp/ss

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



From: Justice Brennan

Circulated: MAR 1 1983

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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

[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.

WJB
~~disagree~~
disagree
strongly
with BRW.

I wonder
what TM
will do
now.

Thus, most of the Court's discussion of the permissible scope of *Terry* investigative stops is also unnecessary to the decision.

I emphasize that *Terry v. Ohio*, 392 U. S. 1 (1968), was a very limited decision that expressly declined to address the "constitutional propriety of an investigative 'seizure' upon less than probable cause for purposes of 'detention' and/or interrogation." *Id.*, at 19, n. 16. *Terry* simply held that under certain carefully defined circumstances a police officer "is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing . . . in an attempt to discover weapons which might be used to assault him." *Id.*, at 30. *Adams v. Williams*, 407 U. S. 143 (1972), endorsed "brief" investigative stops based on reasonable suspicion, *id.*, at 145-146, but the search for weapons upheld in that case was very limited and was based on *Terry*'s safety rationale. *Id.*, at 146. In *Adams*, we stated that the purpose of the "limited" weapons search was "not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. . . ." *Ibid.* In *United States v. Brignoni-Ponce*, 422 U. S. 873 (1975), we held 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." *Id.*, at 881. We based this holding on the importance of the governmental interest in stemming the flow of illegal aliens, on the minimal intrusion of a brief stop, and on the absence of practical alternatives for policing the border. *Ibid.* We noted the limited holdings of *Terry* and *Adams* and while authorizing the police to "question the driver and passengers about their citizenship and immigration status, and . . . ask them to explain suspicious circumstances," we expressly stated that "any further detention or search must be based on consent or probable cause." *Id.*, at 881-882. See also *Dunaway v. New York*,

442 U. S., at 208-212 (discussing the narrow scope of *Terry* and its progeny).

The scope of a *Terry*-type "investigative" stop and any attendant search must be extremely limited or the *Terry* exception would "swallow the general rule that Fourth Amendment seizures [and searches] are 'reasonable' only if based on probable cause." *Dunaway v. New York*, 442 U. S., at 213. In my view, any suggestion that the *Terry* reasonable suspicion standard justifies anything but the briefest of detentions or the most limited of searches finds no support in the *Terry* line of cases.*

In any event, I dissent from the Court's dicta that the initial stop of Royer was legal. For plainly Royer was "seized" for purposes of the Fourth Amendment when the officers asked him to produce his driver's license and airline ticket. *Terry* stated that "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." 392 U. S., at 16. Although I agree that "not all

*I interpret the Court's requirement that the investigative methods employed pursuant to a *Terry* stop be "the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time," *ante*, at —, to mean that the availability of a less intrusive means may make an otherwise reasonable stop unreasonable. I do not interpret it to mean that the absence of a less intrusive means can make an otherwise unreasonable stop reasonable.

In addition, contrary to the Court's apparent suggestion, I am not at all certain that the use of trained narcotics dogs constitutes a less intrusive means of conducting a lawful *Terry* investigative stop. See *ante*, at —. Such a suggestion finds no support in our cases and any question concerning the use of trained dogs to detect the presence of controlled substances in luggage is clearly not before us.

In any event, the relevance of a least intrusive means requirement within the context of a *Terry* investigative stop is not clear to me. As I have discussed, a lawful stop must be so strictly limited that it is difficult to conceive of a less intrusive means that would be effective to accomplish the purpose of the stop.

personal intercourse between policemen and citizens involves 'seizures' of persons," *id.*, at 19, n. 16, and that policemen may approach citizens on the street and ask them questions without 'seizing' them for purposes of the Fourth Amendment, once an officer has identified himself and asked a traveller for identification and his airline ticket, the traveller has been "seized" within the meaning of the Fourth Amendment. By identifying themselves and asking for Royer's airline ticket and driver's license the officers, as a practical matter, engaged in a "show of authority" and "restrained [Royer's] liberty." *Ibid.* It is simply wrong to suggest that a traveller feels free to walk away when he has been approached by individuals who have identified themselves as police officers and asked for, and received, his airline ticket and driver's license.

Before *Terry*, only "seizures" of persons based on probable cause were held to satisfy the Fourth Amendment. *Dunaway v. New York*, 442 U. S., at 208-209. As we stated in *United States v. Brignoni-Ponce*, *supra*, however, *Terry* and *Adams* "establish that in appropriate circumstances the Fourth Amendment allows a properly limited 'search' or 'seizure' on facts that do not constitute probable cause to arrest or to search for contraband or evidence of crime." 422 U. S., at 881. But to justify such a seizure an officer must have a reasonable suspicion of criminal activity based on "specific and articulable facts . . . [and] rational inferences from those facts. . . ." *Terry v. Ohio*, 392 U. S., at 21. See also *Brown v. Texas*, 443 U. S. 47, 51 (1979). In this case, the officers decided to approach Royer because he was carrying American Tourister luggage, which appeared to be heavy; he was young; he was casually dressed; he appeared to be pale and nervous and was looking around at other people; he paid for his airline ticket in cash with a large number of bills; and he did not completely fill out the identification tags for his luggage, which was checked to New York. See *ante*, at ———, n. 2. These facts clearly are not sufficient to

provide the reasonable suspicion of criminal activity necessary to justify the officers' subsequent seizure of Royer. Indeed, considered individually or collectively, they are perfectly consistent with innocent behavior and cannot possibly give rise to any inference supporting a reasonable suspicion of criminal activity. The officers' seizure of Royer, therefore, was illegal.

Although I recognize that the traffic in illicit drugs is a matter of pressing national concern, that cannot excuse this Court from exercising its unflagging duty to strike down official activity that exceeds the confines of the Constitution. We must not allow our zeal for effective law enforcement to blind us to the peril to our free society that lies in this Court's disregard of the protections afforded by the Fourth Amendment.

STYLISTIC CHANGES THROUGHOUT

9 me joined
B R W

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

From: Justice Rehnquist

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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:

"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 plurality 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).

Analyzed simply in terms of its "reasonableness" as that term is used in the Fourth Amendment, the conduct of the investigating officers toward Royer would pass muster with virtually all thoughtful, civilized persons not overly steeped in the mysteries of this Court's Fourth Amendment jurisprudence. Analyzed even in terms of the most meticulous regard for our often conflicting cases, it seems to me to pass muster equally well.

I

The facts of this case, which are doubtless typical of those facing narcotics officers in major airports throughout the country, may be usefully stated in a somewhat different manner than that followed in the opinion of the plurality. Officers Magdalena and Johnson, members of the "Smuggling Detail" of the Dade County Public Safety Department created in response to a growing drug problem at the Miami Airport, were on duty at that airport on January 3, 1978. Since this is one of the peak periods of the tourist season in South Florida and the Caribbean, we may presumably take judicial notice that the airport was in all probability very crowded and busy at that time.

The detectives first saw Royer walking through the airport concourse. He was a young man, casually dressed, carrying two heavily-laden suitcases. The officers described him as nervous in appearance, and looking around in a manner which suggested that he was trying to detect and avoid police officers. Before they approached him, the officers followed Royer to a ticket counter. He there requested a ticket for New York City, and in paying for it produced a large roll of cash in small denomination bills from which he peeled off the necessary amount. He then affixed two baggage tags to his luggage and checked it. Rather than filling out his full name, address, and phone number in the spaces provided on

the tags, Royer merely wrote the words "Holt" and "La Guardia" on each tag.

At this point, the officers approached Royer, identified themselves, and asked if he had a moment to talk. He answered affirmatively, and the detectives then asked to see his airline ticket and some identification.¹ Although his ticket was for the name "Holt," his driver's license was in the name of "Mark Royer." When asked to explain this discrepancy, he said that a friend named Holt had made the ticket reservation. This explanation, of course, did not account for his use of the name "Holt" on the baggage that he had just filled out.

By this time Royer had become all the more obviously nervous. The detectives told Royer that they suspected he was transporting narcotics, and asked if he would accompany them for further questioning to a room adjacent to the concourse "to get out of the general population of the Airport." — So. 2d —, — (Fla. 3d Dist. Ct. App. En Banc 1981). Royer agreed to go. The room was no more than 40 feet from the ticket counter; it was described in the testimony of one of the officers as a "large storage closet" off a stewardess' lounge converted into a room used by the Smuggling Detail, *id.*, at —; the room contained a desk and two chairs. At this time the detectives also, without Royer's consent, retrieved Royer's suitcases from the place where they had been checked through on the flight to New York and brought them to the room off the concourse.

Once inside, the detectives asked Royer if he would consent to a search of the luggage so that they could dispel or confirm their suspicion that he was smuggling narcotics. The plurality's opinion describes what then happened:

"Without orally responding to this request, Royer pro-

¹The plurality recites these facts by noting that while Royer "produced" the ticket and identification, he did so "without oral consent." *Ante*, at 2. See note 2, *infra*.

duced a key and unlocked one of the suitcases, which the detective then opened without seeking further assent from Royer. Drugs were found in that suitcase. According to Detective Johnson, Royer stated that he did not know the combination to the lock on the second suitcase. When asked if he objected to the detective opening the second suitcase, Royer said, 'no, go ahead,' and did not object when the detective explained that the suitcase might have to be broken open. The suitcase was pried open by the officers and more marijuana was found. Royer was then told that he was under arrest. Approximately fifteen minutes elapsed from the time the detectives initially approached respondent until his arrest upon the discovery of the contraband." *Ante*, at 3.²

The plurality inferentially concedes, as of course it must, that at the time the suitcases were opened and 65 pounds of marijuana were disclosed, the officers had probable cause to arrest and detain Royer. But working backward through this very brief encounter, the plurality manages to sufficiently fault the officers' conduct so as to require that Royer's conviction for smuggling drugs be set aside. Analyzed in terms of the "reasonableness" which must attend any search and seizure under the requirements of the Fourth Amendment, I find it impossible to conclude that any step in the officers' efforts to apprehend Royer fails to meet that test.

The plurality concedes that after their initial conversation with Royer, the officers had "grounds for suspecting Royer of carrying drugs and for temporarily detaining him and his luggage while they attempted to verify or dispel their suspicions" *Ante*, at 10. See also *Michigan v. Summers*,

² Why it should make the slightest difference that Royer did not "orally" consent to the opening of the first bag, when in response to the request by the officers that he consent to a search Royer produced a key and unlocked it, is one of the many opaque nuances of the plurality's opinion.

452 U. S. 692, 697-700 (1981); *Adams v. Williams*, 407 U. S. 143, 146 (1972); *Terry v. Ohio*, 392 U. S. 1, 20-21 (1968). I agree that their information reached at least this level.³ The detectives had learned, among other things, that (1) Royer was carrying two heavy suitcases; (2) he was visibly nervous, exhibiting the behavior of a person trying to identify and evade police officers; (3) at a ticket counter in a major import center for illicit drugs, he had purchased a ticket for a city that is a major distribution center for such drugs; (4) he paid for his ticket from a large roll of small denomination bills, avoiding the need to show identification; (5) in filling out his baggage tags, Royer listed only a last name and the airport of destination, failing to give his full name, address, and phone number in the provided spaces, and (6) he was traveling under an assumed name.⁴

³I also agree with the plurality's intimation that when the detectives first approached and questioned Royer, no seizure occurred and thus the constitutional safeguards of the Fourth Amendment were not invoked. *Ante*, at 6. "[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U. S. 1, 19, n. 16 (1968). See also *United States v. Mendenhall*, 446 U. S. 544, 551-557 (1980) (Stewart, J., announcing the judgment of the Court); *id.*, at 560, n. 1 (POWELL, J., concurring in part); *United States v. Herbst*, 641 F. 2d 1161, 1166 (CA5), cert. denied, 454 U. S. 851 (1981); *United States v. Berd*, 634 F. 2d 979, 984-985 (CA5 1981); *United States v. Turner*, 628 F. 2d 461, 462-465 (CA5 1980), cert. denied, 451 U. S. 988 (1981); *United States v. Hill*, 626 F. 2d 429, 432-433, and n. 6 (CA5 1980); *United States v. Fry*, 622 F. 2d 1218, 1220-1221 (CA5 1980); *United States v. Elmore*, 595 F. 2d 1036, 1038-1042 (CA5 1979), cert. denied, 447 U. S. 910 (1980).

⁴The facts of this case bear a strong resemblance to those we examined in *United States v. Mendenhall*, 446 U. S. 544 (1980). In that case, DEA agents in the Detroit Metropolitan Airport observed Mendenhall as she was the last passenger to deplane from a flight originating in Los Angeles. Once inside the terminal, Mendenhall, who appeared very nervous, slowly scanned the populace of the concourse and then walked very slowly toward

The Florida court felt that even these facts did not amount to articulable suspicion, reasoning that this behavior was "at least equally, and usually far more frequently, consistent with complete innocence."⁵ — So. 2d, at —. This evaluation of the evidence seems to me singularly akin to observing that because a stranger who was loitering near a building shortly before an arsonist set fire to the building could not be detained against his will for questioning solely on the basis of that fact, the same conclusion would be reached even though the same stranger had been found loitering in the presence of four other buildings shortly before arsonists had likewise set them on fire. Any one of these factors relied upon by the Miami police may have been as consistent

the baggage area. Rather than claim any baggage, however, Mendenhall asked for directions to the Eastern Airlines ticket counter. At the counter, which was located in another terminal, Mendenhall, who carried an American Airlines ticket for a flight from Detroit to Pittsburgh, asked for an Eastern Airlines ticket for the same trip. Before Mendenhall could board the Eastern Airlines flight, agents stopped her for questioning. Three members of this Court concluded that, based on these observations alone agents had a reasonable suspicion which justified the stop. *Id.*, at 560-565 (POWELL, J., concurring in part). Two members of the Court did not reach the question, finding instead that Mendenhall had never been "seized." *Id.*, at 546-557 (Stewart, J., delivering the judgment of the Court). To the extent that the present case differs from *Mendenhall*, the basis for a reasonable suspicion is stronger on the facts before us now.

⁵ The Florida District Court of Appeal took specific exception to the officers' conclusion that Royer appeared to be nervously attempting to evade police contact. The lower court said that since police officers are not psychiatrists, this conclusion "must be completely disregarded." — So. 2d, at —, n. 4. This Court, however, has repeatedly emphasized that a trained police officer may draw inferences and make deductions that could elude any untrained person observing the same conduct. See, e. g., *United States v. Cortez*, 449 U. S. 411, 418 (1981). We have noted as an example the behavior of a suspect who appears to the officer to be evading police contact. See, e. g., *United States v. Mendenhall*, 446 U. S., at 564 (Stewart, J., delivering the judgment of the Court); *United States v. Brignoni-Ponce*, 422 U. S. 873, 884-885 (1975).

with innocence as with guilt; but the combination of several of these factors is the essence of both "articulable suspicion" and "probable cause."⁴

⁴While the plurality does not address the use of "drug courier profiles" in narcotics investigations, it affirms a decision where the Florida District Court of Appeal took the liberty to fashion a bright-line rule with regard to the use of these profiles. The state court concluded that conformity with a "drug courier profile," "without more," is insufficient to establish even reasonable suspicion that criminal activity is afoot. — So. 2d, at — n. 6.

In 1974 the Department of Justice Drug Enforcement Administration instituted training programs for its narcotics officers wherein instruction was given on a "drug courier profile." A "profile" is, in effect, the collective or distilled experience of narcotics officers concerning characteristics repeatedly seen in drug smugglers. As one DEA agent explained:

"Basically its a number of characteristics which we attribute or which we believe can be used to pick out drug couriers. And these characteristics are basically things that normal travelers do not do Essentially, when we started this detail at the airport, we didn't really know what we were looking for. The majority of our cases, when we first started, involved cases we made based on information from law enforcement agencies or from airline personnel. And as these cases were made, certain characteristics were noted among the defendants. At a later time we began to see a pattern in these characteristics and began using them to pick out individuals we suspected as narcotic couriers without any prior information." *United States v. McClain*, 452 F. Supp. 195, 199 (E.D. Mich. 1977).

Few statistics have been kept on the effectiveness of "profile" usage, but the data available suggests it has been a success. In the first few months of a "profile" program at the Detroit Metropolitan Airport, 141 persons were searched in 96 different encounters; drugs were discovered in 77 of the searches. See *United States v. Van Lewis*, 409 F. Supp. 535, 538 (E.D. Mich. 1976), *aff'd*, 556 F. 2d 385 (CA6 1977), *cert denied*, 434 U. S. 1011 (1980). A DEA agent working at the La Guardia Airport in New York City estimated that some 60% percent of the persons identified as having "profile" characteristics are found to be carrying drugs. *United States v. Price*, 599 F. 2d 494, 501, n. 8 (CA2 1979).

Because of this success, state and local law enforcement agencies also have instructed narcotics officers according to "drug courier profiles." It was partly on the basis of "profile" characteristics that Detectives Johnson and Magdalena initially began surveillance of Royer. Certainly in this case the use of the "profile" proved effective.

The point at which I part company with the plurality's opinion is in the assessment of the reasonableness of the officers' conduct following their initial conversation with Royer. The plurality focuses on the transfer of the place of the inter-

Use of "drug courier profiles" has played an important part in a number of lower court decisions. See, e. g., *United States v. Forero-Rincon*, 626 F. 2d 218 (CA2 1980); *United States v. Vasquez*, 612 F. 2d 1338 (CA2 1979), cert. denied, 447 U. S. 907 (1980); *United States v. Price*, 599 F. 2d 494 (CA2 1979); *United States v. Diaz*, 503 F. 2d 1025 (CA3 1974); *United States v. Sullivan*, 625 F. 2d 9 (CA4 1980), cert. denied, 450 U. S. 923 (1981); *United States v. Hill*, 626 F. 2d 429 (CA5 1980); *United States v. Ballard*, 573 F. 2d 913 (CA5 1978); *United States v. Smith*, 574 F. 2d 882 (CA6 1978); *United States v. Scott*, 545 F. 2d 38 (CA8 1976), cert. denied 429 U. S. 1066 (1977); *United States v. Beck*, 598 F. 2d 497 (CA9 1979). In fact, the function of the "profile" has been somewhat overplayed. Certainly, a law enforcement officer can rely on his own experience in detection and prevention of crime. Likewise, in training police officers, instruction focuses on what has been learned through the collective experience of law enforcers. The "drug courier profile" is an example of such instruction. It is not intended to provide a mathematical formula that automatically establishes grounds for a belief that criminal activity is afoot. By the same reasoning, however, simply because these characteristics are accumulated in a "profile," they are not to be given less weight in assessing whether a suspicion is well founded. While each case will turn on its own facts, sheer logic dictates that where certain characteristics repeatedly are found among drug smugglers, the existence of those characteristics in a particular case is to be considered accordingly in determining whether there are grounds to believe that further investigation is appropriate. Cf. *United States v. Cortez*, 449 U. S. 411, 418 (1981).

The "drug courier profile" is not unfamiliar to this Court. We have held that conformity with certain aspects of the "profile" does not automatically create a particularized suspicion which will justify an investigatory stop. *Reid v. Georgia*, 448 U. S. 438 (1980) (per curiam). Yet our decision in *United States v. Mendenhall*, 446 U. S. 544 (1980), made it clear that a police officer is entitled to assess the totality of the circumstances in the light of his own training and experience and that instruction on a "drug courier profile" would be a part of his accumulated knowledge. This process is not amenable to bright-line rules such as the Florida court tried to establish. We are not dealing

"with hard certainties, but with probabilities. Long before the law of

view from the main concourse of the airport to the room off the concourse and observes that Royer "found himself in a small room—a large closet—equipped with a desk and two chairs. He was alone with two police officers who again told him that they thought he was carrying narcotics. He also found that the officers, without his consent, had retrieved his checked luggage from the airlines." *Ante*, at 11.

Obviously, this quoted language is intended to convey stern disapproval of the described conduct of the officers. To my mind, it merits no such disapproval and was eminently reasonable. Would it have been preferable for the officers to have detained Royer for further questioning, as they concededly had a right to do, without paying any attention to the fact that his luggage had already been checked on the flight to New York, and might be put aboard the flight even though Royer himself was not on the plane? Would it have been more "reasonable" to interrogate Royer about the contents of his suitcases, and to seek his permission to open the suitcases when they were retrieved, in the busy main concourse of the Miami Airport, rather than to find a room off the concourse where the confrontation would surely be less embarrassing to Royer? If the room had been large and spacious, rather than small, if it had possessed three chairs rather than two, would the officers' conduct have been made reasonable by these facts?

The plurality's answers to these questions, to the extent that it attempts any, are scarcely satisfying. It commences with the observation that it doubts "that the prosecution in this case has satisfactorily demonstrated that it employed the

probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *United States v. Cortez*, 449 U. S., at 418. See also *Brown v. Texas*, 443 U. S. 47, 52, n. 2 (1979).

least intrusive means to pursue its suspicions." *Ante*, at 12. Earlier in its opinion, this familiar principle of First Amendment law is suddenly carried over into Fourth Amendment law by the citation of two cases, *United States v. Brignoni-Ponce*, 422 U. S. 873, 881-882 (1975), and *Adams v. Williams*, 407 U. S., at 146, neither one of which lends any support to the principle as a part of Fourth Amendment law. The plurality goes on to say that had the officers returned Royer's ticket and driver's license, the encounter clearly would have been consensual. The plurality also states that while there were good reasons to justify moving Royer from one location to another, the officers' motives in seeking to examine his luggage renders these reasons unavailing—a conclusion the reason for which wholly escapes me. Finally, the plurality suggests that the officers might have examined Royer's bags in a more expeditious way, such as the use of trained dogs.

All of this to my mind adds up to little more than saying that if my aunt were a man, she would be my uncle. The officers might have taken different steps than they did to investigate Royer, but the same may be said of virtually every investigative encounter that has more than one step to it. The question we must decide is what was *unreasonable* about the steps which *these officers* took with respect to *this* suspect in the Miami Airport on this particular day. On this point, the plurality stutters, fudges, and hedges:

"Obviously, what had begun as a consensual inquiry in a public place had escalated into an investigatory procedure in a police interrogation room, where the police, unsatisfied with previous explanations, sought to confirm their suspicions." *Ante*, at 11.

Obviously. But since even the plurality concedes that there was articulable suspicion warranting an investigatory detention, the fact that the inquiry had become an "investigatory procedure in a police interrogation room" would seem to have

little bearing on the proper disposition of a claim that the officers violated the Fourth Amendment. The plurality goes on to say:

"At least as of that moment, any consensual aspects of the encounter had evaporated, and we cannot fault the Florida Court of Appeal in concluding that *Terry v. Ohio* and the cases following it did not justify the restraint to which Royer was then subjected. As a practical matter, Royer was under arrest." *Ibid.*

Does the plurality intimate that if the Florida Court of Appeal had reached the opposite conclusion with respect to the holdings of *Terry* and the cases which follow it, it would affirm that holding?¹ Does it mean that the 15-minute duration of the total encounter, and the even lesser amount of elapsed time during which Royer was in the "interrogation room," was more than a "*Terry*" investigative stop can ever consume? These possible conclusions are adumbrated, but not stated; if the plurality's opinion were to be judged by standards appropriate to Impressionist paintings, it would perhaps receive a high grade, but the same cannot be said if it is to be judged by the standards of a judicial opinion.

Since the plurality concedes the existence of "articulable suspicion" at least after the initial conversation with Royer, the only remaining question is whether the detention of Royer during that period of time was permissible under the rule enunciated in *Terry v. Ohio*, 392 U. S. 1 (1968). Although *Terry* itself involved only a protective pat down for weapons, subsequent cases have expanded the permissible

¹ See also *ante*, at 9 ("The question before us is whether the record warrants that conclusion."); *ante*, at 15 ("[W]e think that the Florida Court of Appeal cannot be faulted in concluding that the limits of a *Terry*-stop had been exceeded.). Certainly we owe no such deference to the Florida court's conclusion. See *Haynes v. Washington*, 373 U. S. 503, 515-516 (1963) (quoting *Stein v. New York*, 346 U. S. 156, 181 (1953)); *Fiske v. Kansas*, 274 U. S. 380, 385-386 (1927).

scope of such a "seizure." In *Adams v. Williams*, 407 U. S. 143 (1972), we upheld both a search and seizure of a pistol being carried by a suspect seated in a parked automobile. In *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976), we allowed government officials to stop, and divert for visual inspection and questioning, automobiles which were suspected of harboring illegal aliens. These stops, including waiting time, could clearly have approximated in length the time which Royer was detained, and yet *Martinez-Fuerte* allowed them to be made "in the absense of any individualized suspicion at reasonably located checkpoints." 428 U. S., at 562 (emphasis supplied). Unless we are to say that commercial drug trafficking is somehow quantitatively less weighty on the Fourth Amendment scale than trafficking in the illegal aliens, I think the articulable suspicion which concededly focused upon Royer justified the length and nature of his detention.⁸

The reasonableness of the officers' activity in this case did not depend on Royer's consent to the investigation. Nevertheless, the presence of consent further justifies the action taken. The plurality does not seem to dispute that Royer consented to go to the room in the first instance. Certainly that conclusion is warranted by the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U. S. 218, 227 (1973). The facts are similar to those addressed in *United States v. Mendenhall*, 446 U. S. 544 (1980), where a majority of the Court determined that consent to accompany police officers had been voluntary. Royer was not told that he had to go to the room, but was simply asked, after a brief period of

⁸The detention of Royer would also pass muster under this Court's Fourth Amendment jurisprudence if the officers had "a reasonable ground for belief of guilt" prior to their adjournment to the room. *Brinegar v. United States*, 338 U. S. 160, 175 (1949). But since the officers clearly had an articulable suspicion to justify the detention under *Terry v. Ohio*, 392 U. S. 1 (1968), the probable cause issue need not be decided in this case.

questioning, if he would accompany the detectives to the room. Royer was informed as to why the officers wished to question him further. There were neither threats nor any show of force. Detectives Johnson and Magdalena were not in uniform and did not display weapons. The detectives did not touch Royer and made no demands. In fact, Royer admits that the detectives were quite polite.⁹

The plurality concludes that somewhere between the beginning of the 40 foot journey and the resumption of conversation in the room the investigation became so intrusive that Royer's consent "evaporated" leaving him "[a]s a practical matter . . . under arrest." *Ante*, at 11. But if Royer was legally approached in the first instance and consented to accompany the detectives to the room, it does not follow that his consent went up in smoke and he was "arrested" upon entering the room. As we made clear in *Mendenhall*, logical analysis would focus on whether the environment in the room rendered the subsequent consent to a search of the luggage involuntary.

As we said in *Mendenhall*, "the fact that she was [in the room] is little or no evidence that she was in any way coerced." 446 U. S., at 559. Other than the size of the room, described as "a large storage closet,"¹⁰ there is nothing in the

⁹ Contrary to the Florida court's view, this phase of the encounter contrasts sharply with the circumstances we examined in *Dunaway v. New York*, 442 U. S. 200 (1979). In that case, police officers deliberately sought out the suspect at a neighbor's house and, with a show of force, brought the suspect to police headquarters in a police car, placed him in an interrogation room, and questioned him extensively after giving him a *Miranda* warning. Unlike in *Dunaway*, Royer, after brief questioning, was asked to cooperate by accompanying the officers to a room no more than 40 feet away, so that the questioning could proceed out of the view of the general public.

¹⁰ The characterization of the room as a "closet" is quite misleading. The room contained one desk and two chairs. It was large enough to allow three persons to enter with two heavy suitcases. It also is relevant that it was the Florida court, not Royer, who focused on the size of the room.

record which would indicate that Royer's resistance was overborne by anything about the room. Royer, who was in his fourth year of study at Ithaca College at the time and has since graduated with a degree in *communications*, simply continued to cooperate with the detectives as he had from the beginning of the encounter. Absent any evidence of objective indicia of coercion, and even absent any claim of such indicia by Royer, the size of the room itself does not transform a voluntary consent to search into a coerced consent.

For any of these several reasons, I would reverse the judgment of the Florida District Court of Appeal.

Royer appealed his conviction arguing that his consent to a search was invalid as a matter of law because he was not informed that he could refuse consent. A panel of the Florida court properly rejected this contention relying on *Schneckloth v. Bustamonte*, 412 U. S. 218, 234 (1973), where we said that "proof of knowledge of a right to refuse [is not] the *sine qua non* of an effective consent to a search." It was during rehearing by the court *en banc* that the conviction was reversed with the court finding that when Royer was taken into the private room he was in effect placed under arrest.

ROY MICHAL-POW

80-2146, Florida v. Royer

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

¹As 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.

²Since 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, id., at 562.

This case, however, is strikingly different from Mendenhall in its circumstances following the lawful initial questioning and request that Royer accompany the officers to a more private place. He then found himself in a small, windowless room--described as a "large closet"--alone with two officers who, without his consent, already had obtained possession of his checked luggage. In addition, they had retained his driver's license and airline ticket. Neither the evidence in this case nor common sense suggests that Royer was free to walk away. I agree with the plurality that as a practical matter he then was under arrest, and his surrender of the luggage key to the officers cannot be viewed as consensual.

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Michael Sturley

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No. 80-2146

FLORIDA v. ROYER

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JUSTICE POWELL, concurring.

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W.F.D.
lfp/ss 03/17/83

ROYER1 SALLY-POW

80-2146 Florida v. Royer

FILE
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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

To: The Chief Justice
Justice Brennan
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 —, 1988]

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

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ing and request that Royer accompany the officers to a more private place. He then found himself in a small, windowless room—described as a “large closet”—alone with two officers who, without his consent, already had obtained possession of his checked luggage. In addition, they had retained his driver’s license and airline ticket. Neither the evidence in this case nor common sense suggests that Royer was free to walk away. I agree with the plurality that as a practical matter he then was under arrest, and his surrender of the luggage key to the officers cannot be viewed as consensual. s

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lfp/ss 03/17/83

ROYER1 SALLY-POW

80-2146 Florida v. Royer

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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 23, 1983]

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