

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

JUNE 1, 2003
VOLUME II NUMBER 12

TOPIC:

A LOOK BACK AT THE LATE, GREAT CASE OF FLORIDA V. ROYER, THE PROPER APPROACH CASE (IF YOU PLEASE), WHICH IS THE SECOND IN MY SERIES OF "GREAT QUOTES" CASES

THE SECOND "GREAT QUOTES" CASE: *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

By: Ralph B. Strickland, Jr.

STATEMENT:

Reasonable suspicion is not necessary to approach a person in public. Reasonable suspicion is necessary only if you want to make a seizure of that person.

FACTS:

Two plainclothes law enforcement officers approached Mr. Royer at an airport lounge because he fit the drug courier profile: his pockets were bulging with cocaine and the little bags were spilling out onto the floor as he deplaned. No, not really. But he (1) was carrying luggage which appeared to be very heavy; (2) was young - about 30 years old; (3) was casually dressed; (4) appeared pale and nervous; (5) paid for his ticket with cash; (6) and rather than completely filling out the airline identification baggage tag, wrote only a name and destination.

The men identified themselves as cops (my affectionate term for all sworn personnel) and asked if he would speak with them. He consented and upon further request produced his airline ticket and his driver's license. He became visibly nervous when the officers noted the ticket was issued in one name, his driver's license in another. And especially when they told him they suspected him of transporting narcotics.

Without returning his ticket or license (oh no!) they asked him to accompany them to a small room off the concourse. He said nothing in response but went with them. Without his consent (yikes!) they retrieved his luggage and brought it to the room. When asked if he would consent to a search of his suitcases, again he did not speak, but handed the officers a key. When opened, the suitcase was discovered to contain marijuana.

THE HOLDING:

The Supreme Court of the United States held that, although he was correctly approached in the airport, Mr. Royer was moved without his consent to the small room and held there illegally and without probable

cause. Therefore, his consent to search the suitcase was the result of an illegal custody, and its fruits (the marijuana) could not be admitted into evidence.

WHAT!?!#*!!@?! WE LOST THE CASE AND IT'S STILL A "GREAT QUOTES" CASE? NEVAH HAPPEN! TO THE CONTRARY!

Here is a direct quote from the case (though it appeared as one paragraph in the opinion, I am going to set it out in independent sentences):

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.

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

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. If there is no detention – no seizure within the meaning of the Fourth Amendment – then no constitutional rights have been infringed.

SEE? GREAT QUOTES!

And the wonderful thing is, don't you know, that the Supreme Court makes it very clear that no suspicion is necessary to just "noodle up" to somebody and talk to them. I kinda like noodling up to folks. Don't you? I'll mosey around some, too. Kevin even lollygags on occasion (I have seen him do so), and Greg's been known to gad about when he thinks no one is looking. Of course, even Trimmer cannot be fooled into a traipse. He'll slog, schlep, rove or trek, but absolutely refuses a good traipse. Bummer, Trimmer.

Now, I have heard members of the bar argue that an officer needs reasonable suspicion to even approach a person, but as you see, that is not the law. And you are free to ask questions without warnings. Of course, they can leave your presence if they so choose. But you'll find no clearer statement of a law enforcement officer's rights to approach and question in public where no reasonable suspicion exists.

BONUS! A SIMPLE RULE ABOUT ASKING FOR CONSENT:

The best rule is to never ask a person if he is willing to change locations, especially to a place more isolated or confined, until you return his license, registration or any such item of personal property belonging to him. Of course, if he is seized you may move him a short distance. And you may move a seized person even further for safety and security purposes. And another rule: unless he is seized, you should not ask for consent to search so long as you retain an item of his personal property. Consider returning such items to the person before making your request!

I gotta tell ya, I love noodling up to this job!