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Recent Developments: Florida v. Bostick: Police Officers May Board Bus and Randomly Ask Passengers for Consent to Search Luggage without Necessarily Violating Fourth Amendment

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doctrine by establishing that containers and compartments could be included in a warrantless search of an automobile, provided the search was supported by probable cause. *Acevedo*, 111 S. Ct. at 1986. *Ross*, however, distinguished the *Carroll* doctrine from the separate rule governing searches of closed containers established in *Chadwick* and *Sanders*. *Id.*

In both *Chadwick* and *Sanders*, police conducted a warrantless search of luggage which was being transported in an automobile. Although police had probable cause to suspect the luggage, they did not have probable cause to suspect that the vehicles were carrying contraband. *Id.* at 1986-87. In both cases, the Court refused to extend the *Carroll* doctrine to include the warrantless search of luggage merely because it happened to be transported in an automobile. *Id.* at 1987. The Court emphasized the heightened privacy interest a person expects in his or her luggage and personal effects, and concluded that this interest was not diminished by the presence of such items in a vehicle. *Id.* at 1986-87.

In overruling the *Chadwick-Sanders* rule, the Court reasoned that the rule afforded minimum privacy protection to individuals and impeded effective law enforcement. *Id.* at 1989. The Court recognized that "a container found after a general search of the automobile and a container found in a car after a limited search for the container are equally easy for the police to store and for the suspect to hide or destroy." *Id.* at 1988. The Court noted that under *New York v. Belton*, 453 U.S. 454 (1981), law enforcement officers could not only seize a container and hold it until a warrant was obtained, but could also search containers without a warrant as a search incident to a lawful arrest. *Acevedo*, 111 S. Ct. at 1988. Because the *Chadwick-Sanders* rule did not substantially serve privacy interests, the Court held that separate treatment for an automobile search extending only to a container within the vehicle was no longer required under the Fourth Amendment. *Id.* at 1989.

The Court further reasoned that the *Chadwick-Sanders* rule had "confused courts and police officers and impeded effective law enforcement." *Id.* It was not always clear whether there was probable cause to search a package or an entire vehicle. *Id.* at 1989-90. For example, if an officer had probable cause to believe that an automobile contained drugs, began to search the vehicle and immediately discovered a package of drugs, arguably either rule could apply. *Id.*

This confusion was further demonstrated by the fact that since 1982, state courts and federal courts of appeals had been reversed in their Fourth Amendment holdings twenty-nine times. *Id.* at 1990. Because of this confusion, the Court concluded that it was better "to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers set forth in *Sanders* . . . . The interpretation of the *Carroll* doctrine set forth in *Ross* now applies to all searches of containers found in an automobile." *Id.* at 1991. Thus, police may conduct a warrantless search of an automobile or any container in the automobile as long as the search is supported by probable cause. *Id.*

By its decision in *Acevedo*, the Supreme Court simplified the confusing law surrounding the automobile exception to the warrant clause of the Fourth Amendment. While this may lead to more effective law enforcement, the privacy interests of the individual may have been compromised. The fact that privacy rights in personal effects are lost immediately as one enters a moving vehicle may lead to an abuse of police power and less protection for the individual.

- Kim-Haylee Loewenstein Band

Florida v. Bostick: POLICE OFFICERS MAY BOARD BUS AND RANDOMLY ASK PASSENGERS FOR CONSENT TO SEARCH LUGGAGE WITHOUT NECESSARILY VIOLATING FOURTH AMENDMENT.

In *Florida v. Bostick*, 111 S. Ct. 2382 (1991), the Supreme Court decided that a seizure did not automatically occur when police officers boarded buses and asked passengers for consent to search their luggage. The Court stated that while the Fourth Amendment does prohibit unreasonable searches and seizures, it does not prohibit voluntary co-operation.

During a stopover in Ft. Lauderdale, two police officers boarded a bus and, without reasonable suspicion, requested permission to search the defendant's (Bostick) luggage. The police officers did not use threats, and Bostick was explicitly told that he had the right to refuse consent. Bostick consented to the search which led police to find cocaine in his luggage.

Bostick argued that a seizure took place when police officers boarded the bus and asked for consent to search his luggage. Bostick moved to suppress the evidence on the basis that it was improperly seized in violation of his Fourth Amendment rights. The Florida District Court of Appeal affirmed the trial court's denial of Bostick's motion, but certified the question of seizure to the

Florida Supreme Court. Because the encounter took place in the cramped confines of a bus, Bostick argued that the police presence was much more intimidating than it would be in another setting. *Bostick*, 111 S. Ct. at 2386. Reversing the lower courts' decision, the Florida Supreme Court held that a seizure resulted when the police officers randomly boarded the bus and without articulable suspicion, asked for the passengers' consent to search their luggage. *Id.* at 2385 (citing 554 So. 2d at 1154 (Fla. 1989)). The court reasoned that a seizure occurred because a reasonable passenger "would not have felt free to leave the bus to avoid questioning by the police." *Id.* The court thus adopted a per se rule that bus searches were unconstitutional. The United States Supreme Court granted certiorari to decide whether the Florida per se rule was compatible with Fourth Amendment jurisprudence.

In addressing the issue of whether a police encounter of this nature constituted a "seizure" within the Fourth Amendment, the Supreme Court outlined established case law which demonstrated that "a seizure does not occur simply because a police officer approaches an individual and asks a few questions." *Bostick*, 111 S. Ct. at 2386. The Court stated that "[s]o long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required." *Id.* (citing *California v. Hodari D.*, 111 S. Ct. 1547, 1551 (1991)).

The Court then rejected Bostick's claim that his case was different because it took place in the cramped quarters of a bus. The Court reasoned that Bostick's movements were confined not because police conduct was "coercive," but because he was a passenger on a bus that was scheduled to depart. *Id.* at 2387. Because a person traveling on a bus has no desire to leave, the presence of the police was not an accurate measurement of the coerciveness of the encounter. *Id.*

The Court then cited *INS v. Delgado*, 466 U.S. 210 (1984), which it found to be dispositive of the issue. In *Delgado*, the Court held that a seizure had not occurred when workers were questioned in their workplace and were not free to leave without being questioned. *Id.* (citing *Delgado*, 466 U.S. at 218). The Court observed that the officers' conduct provided the workers with no reason to believe that they would be detained if they refused to answer any questions. *Id.* The *Delgado* Court emphasized that the workers' ability to leave was not restricted by the police officers, but by voluntary obligations to their employers. *Id.*

The Court stated that Bostick's case was analytically indistinguishable from *Delgado*. *Id.* Like the workers in *Delgado*, the Court reasoned that Bostick's movement was restricted by a factor independent of the police conduct. *Id.* Therefore, according to the Court, the "free to leave" analysis used by the Florida Supreme Court was not the correct inquiry. *Id.* The Court held instead that the "appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter." *Id.* The location of the encounter is only one of the factors to be considered in determining whether a seizure had occurred. *Id.*

In observing that its opinion is consistent with prior decisions, the Court noted that it has previously stated that "the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Id.* (citing *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988)). Consequently, the Court held that it was not per se unconstitutional for police officers to board buses and randomly request passengers' consent to search their luggage. *Id.* at 2389. In light of its decision, the Court remanded the case to the Florida courts to determine whether a seizure took place.

Although the Supreme Court claimed that no new ground was broken by its decision, it is now clear that police officers may pursue drug interdiction efforts on buses. Prior Court decisions have allowed police officers to question individuals in such places as the workplace, in airport lobbies, and on city streets. The reasoning in *Florida v. Bostick* indicates that individuals will no longer be immune from police questioning in many other public places. The Court's decision has sent a message that police may question individuals anywhere they please so long as the encounter is not coercive.

- Will Jacobi

Craig v. State: THE COURT OF APPEALS REDEFINES WHEN AN ABUSED CHILD IS CONSIDERED SUFFICIENTLY UNAVAILABLE TO TESTIFY AND ALLOWS FOR THE TAKING OF TESTIMONY BY CLOSED-CIRCUIT TELEVISION.

In a case of constitutional import, the Court of Appeals of Maryland clarified when it is appropriate for a trial court judge to order the testimony of a child abuse victim to be taken outside the courtroom