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Florida v. Bostick

Yale Kamisar

University of Michigan Law School, ykaminsar@umich.edu

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Florida v. Bostick,

501 U.S. 429 (1991), argued 26 Feb. 1991, decided 20 June 1991 by vote of 6 to 3; O'Connor for the Court, Marshall in dissent. What constitutes a “seizure” within the meaning of the Fourth Amendment? Police practices need not be “reasonable”—indeed, are not regulated by the Fourth Amendment at all—unless they are considered “searches” or “seizures.” In this case, which involved a growing antidrug police tactic known as “working the buses” (randomly approaching a bus passenger and asking him for identification and to grant permission to search his luggage), the Court took a narrow view of what constitutes a “seizure.”

Police boarded an interstate bus on which Bostick was a passenger, asked for his identification, and questioned him. Bostick later claimed that an illegal “seizure” had occurred because a reasonable person in those circumstances would not have felt free to leave; moreover, he had done nothing to arouse suspicion. Bostick contended the illegal seizure tainted and invalidated his subsequent “consent” to search his luggage (a search that turned up cocaine).

The Florida Supreme Court agreed. It excluded the cocaine and banned the use of bus-boarding tactics. But the U.S. Supreme Court held that the state court had committed error when it adopted a flat rule prohibiting the police from boarding buses and approaching passengers at random as a means of drug interdiction.

The Court noted that Bostick's movement was restricted by a factor independent of police conduct—by his being a passenger on a bus. (If he had left the bus, Bostick would have risked being stranded and losing whatever luggage he had locked away in the luggage compartment.) Under such circumstances, the Court pointed out, the appropriate inquiry is not whether a reasonable person would feel free to leave but whether he or she would feel free to “terminate the encounter” or to “ignore the police presence” (p. 2387). Although the Court remanded the case to the state court for further findings on this issue, it broadly hinted that Bostick had not been “seized” within the meaning of the Fourth Amendment.