From the SelectedWorks of Jennifer Allison

Summer 2019

How to Read and Brief a Case: An Exercise for Law Students

Jennifer Allison

Available at: https://works.bepress.com/jennifer_allison/64/

HOW TO WRITE A CASE BRIEF

Goal: Learn the basics of case briefing and to recognize the types of language to look for when briefing a case.

Introduction

Law students in the US read hundreds of cases during their three years of law school. Most of these cases are decisions that are issued by the U.S. Supreme Court.

The reason that law students are assigned cases to read is tied to the notion of ***stare decisis*, or the precedential-value of judge-made law in common law jurisdictions**. Reading cases is how U.S. law students learn legal rules and how they are to be applied to a distinct set of facts.

Reading cases is especially important in a course like Criminal Procedure, which deals with the interpretation of the Fourth Amendment's prohibition against unreasonable searches and seizures. Since the Constitution does not tell us what "unreasonable," "search," and "seizure" mean, the courts uses cases to define those concepts.

At least one case is discussed in each law school class session. However, the professor does not simply stand at the front of the room and lecture on the facts and rule of the case during class. Instead, U.S. law schools have what is called the **Socratic Method**. This means that the professor asks students to present various aspects of the case, and to offer their opinions about them.

This experience of getting "called on" by a professor, and expected to answer his or her questions correctly, can be frightening and stressful for law students, especially those in their first year of law school.

To prepare for getting called on, students read the assigned cases before each class session and take detailed notes. These notes have a particular format. Specifically, a law student will write a "case brief" for each case he or she reads. This case brief will help the student discuss the case and answer the professor's questions.

Format of a Case Brief

A case brief includes the following information:

- Name of the case
- Citation to the case
- Court that rendered the decision
- Date of the decision
- Facts = A short description of the facts that are relevant to the judgment in the case

- Procedural Posture = A short description of what has happened in this case up until it was heard in the court that rendered the decision you are reading (outcome at trial and on appeal)

- Issue = A one-sentence statement, in the form of a question, of the legal issue decided by the court in the case

- Rule(s) = A brief statement of each legal rule that is discussed in the case and relevant to the decision

- Analysis = A description of how the court applied the rules to the facts in the case.

- Conclusion = A brief statement of what happened in this case.

You may want to use a table like this as a template. You would fill out one of these tables for each case you read.

Case Name Citation to the case Court that heard the case Date of the decision	
Facts	A short description of the facts that are relevant to the judgment in this case. What should you include here? Who the parties are, how they ended up in this legal dispute, what their legal arguments are, and how they want the dispute to be resolved.
Procedural Posture	What happened in the lower courts in this case? Who won at trial? What happened on appeal?
Issue	In one sentence, what is the court who issued the opinion you're reading now being asked to decide? Make sure you formulate this in the form of a question.
Rule(s)	List the legal rules that you find in the decision that the court uses in its analysis to render its decision. Sometimes there's only one; often there are more.
Analysis	This will be the longest section of your brief and the part on which you will probably spend the most time. Here is where you discuss how the court applied the rules listed above to the facts listed above on the way toward making its determination about what the outcome of the case should be.
Conclusion	This is a short statement of the court's decision. Include any information about what is supposed to happen next in the case, if the opinion includes it.

Case Brief Writing Considerations

The most important thing to remember when you are doing a case brief is that these are YOUR notes that you will use in class. You can copy and paste directly from the opinion if you want – you do not have to write these things out in your own words. In fact, the professor will probably want you to use the exact language that the court used in the opinion when you discuss the case.

You do not have to fill in the boxes of your case brief in the order they are listed in the table. Sometimes, the judge will state the conclusion of the case in the very first paragraph of the opinion! Write down what you think belongs in each box as you read. This will be especially helpful if it makes you stressed to stare a blank page for a long time.

Case briefing is very difficult if you have not done it before. First-year law students can, at the beginning of law school, take HOURS to finish a single brief. This will likely be your experience as well. Remember, the more you practice, the easier it will be and the faster you will be able to do it. Experienced lawyers can generally brief a case in about 10 minutes, but it takes them many years to get to this point.

Exercise

Let's see what this looks like, using the 1991 Supreme Court opinion that appears on pages 18-20 of this document, the case of ***Florida v. Bostick***.

When you get a case that has been edited down for you to read (like this one is), you will get the following information right at the top of the first page:

- Name of the case
- Citation to the case
- Court that rendered the decision
- Date of the decision

For the *Bostick* case, it would look something like this:

Florida v. Bostick
501 U.S. 429 (1991)
Supreme Court of the United States
1991

This is the information that you need to list in the first box of your case brief, like this:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	
Procedural Posture	
Issue	
Rule(s)	
Analysis	
Conclusion	

The author of the Supreme Court decision in this case, Justice Sandra Day O'Connor, did us all a great favor when she wrote its first paragraph. This paragraph, which is shown in the gray box below, would definitely appear in any edited edition of the case as well.

> We have held that the Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate. This case requires us to determine whether the same rule applies to police encounters that take place on a bus.

Let's break this paragraph down to help us understand what we can use for our brief.

- In the first sentence, she starts out by saying **"We have held…"** This is key language in any case, and you should sit up and take notice whenever you see anything like it.
    - In this case, **"we"** means the Supreme Court.
    - The words **"have held"** means that the text following those words are a rule established by the Supreme Court in a prior case.
    - Therefore, you will want to write something like this in the Rule(s) box of your brief: **"The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate."**

- Since there will probably be multiple rules in this case, you may want to label it with something like ***"Airport Lobby Police Search Request Rule."*** But this is not required – it's all about what helps you stay organized.

- In the second sentence, Justice O'Connor is telling us exactly what is at issue in this case. We can write out this issue, in the form of a question, in the **Issue** box as follows: **"Does the rule that police officers can question people and request to search their luggage in airport lobbies also apply to police encounters on a bus?"**

So after we do this, our case brief will look like this:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	
Procedural Posture	
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies also apply to police encounters on a bus?
Rule(s)	Airport Lobby Police Search Request Rule: The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate.
Analysis	
Conclusion	

At this point, because we have thoughtfully read, absorbed, and briefed that first paragraph, we also know that we should be on the lookout for some specific facts in this case, and can make some general assumptions about what happened that might be helpful to us:

- One or more defendants was on a bus when he/she was questioned by the police and asked to consent to search his/her luggage.

- The defendant probably consented to the search, and the police probably found something in his/her bag that was illegal (drugs, guns, or ??).

- The fact that the police found whatever they found led to criminal charges being filed against the defendant.

- The defendant probably argued that it was an illegal search, and that the evidence should not be able to be used against him/her in the criminal case.

An edited version of this case will probably have the following text next:

> In this case, two officers discovered cocaine when they searched a suitcase belonging to Terrance Bostick. The underlying facts of the search are in dispute, but the Florida Supreme Court, whose decision we review here, stated explicitly the factual premise for its decision:
>
> > " 'Two officers, complete with badges, insignia and one of them holding a recognizable zipper pouch, containing a pistol, boarded a bus bound from Miami to Atlanta during a stopover in Fort Lauderdale. Eyeing the passengers, the officers, admittedly without articulable suspicion, picked out the defendant passenger and asked to inspect his ticket and identification. The ticket, from Miami to Atlanta, matched the defendant's identification and both were immediately returned to him as unremarkable. However, the two police officers persisted and explained their presence as narcotics agents on the lookout for illegal drugs. In pursuit of that aim, they then requested the defendant's consent to search his luggage. Needless to say, there is a conflict in the evidence about whether the defendant consented to the search of the second bag in which the contraband was found and as to whether he was informed of his right to refuse consent. However, any conflict must be resolved in favor of the state, it being a question of fact decided by the trial judge.' "
>
> Two facts are particularly worth noting. First, the police specifically advised Bostick that he had the right to refuse consent. Bostick appears to have disputed the point, but, as the Florida Supreme Court noted explicitly, the trial court resolved this evidentiary conflict in the State's favor. Second, at no time did the officers threaten Bostick with a gun. The Florida Supreme Court indicated that one officer carried a zipper pouch containing a pistol—the equivalent of carrying a gun in a holster—but the court did not suggest that the gun was ever removed from its pouch, pointed at Bostick, or otherwise used in a threatening manner.

This section contains some good **facts** for our brief.

- As we suspected, the defendant was on a bus, and illegal drugs were found by the police in his suitcase.
- Prior to the defendant's suitcase being searched, the following events took place:
    - The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents.
    - The police officers requested, and, according to the facts in evidence, were given, consent to search the defendant's suitcase.
    - The police officers told the defendant he had the right to refuse consent.
    - The police officers did not threaten the defendant with a gun.

We now have enough to fill out the **Facts box** of our brief, as follows:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents. The police officers requested, and according to the facts in evidence were given, consent to search the defendant's suitcase. The police officers told the defendant he had the right to refuse consent. The police officers did not threaten the defendant with a gun. When they searched the defendant's suitcase, the police officers found illegal drugs.
Procedural Posture	
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies also apply to police encounters on a bus?
Rule(s)	Airport Lobby Police Search Request Rule: The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate.
Analysis	
Conclusion	

The next portion of text in the edited version of the case would be this:

Bostick was arrested and charged with trafficking in cocaine. He moved to suppress the cocaine on the grounds that it had been seized in violation of his Fourth Amendment rights. The trial court denied the motion but made no factual findings. Bostick subsequently entered a plea of guilty, but reserved the right to appeal the denial of the motion to suppress.

The Florida District Court of Appeal affirmed, but considered the issue sufficiently important that it certified a question to the Florida Supreme Court. The Supreme Court reasoned that Bostick had been seized because a reasonable passenger in his situation would not have felt free to leave the bus to avoid questioning by the police. It ruled categorically that " 'an impermissible seizure result[s] when police mount a drug search on buses during scheduled stops and question boarded passengers without articulable reasons for doing so, thereby obtaining consent to search the passengers' luggage.' " The Florida Supreme Court thus adopted a per se rule that the Broward County Sheriff's practice of "working the buses" is unconstitutional….We granted certiorari to determine whether the Florida Supreme Court's per se rule is consistent with our Fourth Amendment jurisprudence.

This section of the case is useful in filling out the **Procedural Posture** box in our brief. Remember, this is where we say what happened in the lower courts before the U.S. Supreme Court heard this case.

Our updated brief will now look something like this:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents. The police officers requested, and according to the facts in evidence were given, consent to search the defendant's suitcase. The police officers told the defendant he had the right to refuse consent. The police officers did not threaten the defendant with a gun. When they searched the defendant's suitcase, the police officers found illegal drugs.
Procedural Posture	Trial court: D pleaded guilty, reserved right to appeal denial of motion to suppress drugs. COA affirmed, certified question to Florida Supreme Court, which ruled that working the buses in this way was unconstitutional because it is a seizure (reasonable passenger would not have felt free to leave the bus). SCOTUS granted cert.
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies also apply to police encounters on a bus?
Rule(s)	Airport Lobby Police Search Request Rule: The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate.
Analysis	
Conclusion	

The next part of an edited version of this case would read as follows:

> The sole issue presented for our review is whether a police encounter on a bus of the type described above necessarily constitutes a "seizure" within the meaning of the Fourth Amendment.
>
> …

> Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free "to disregard the police and go about his business," California v. Hodari D., 499 U.S. 621, 628 (1991), the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.
>
> …
>
> There is no doubt that if this same encounter had taken place before Bostick boarded the bus or in the lobby of the bus terminal, it would not rise to the level of a seizure.

The first thing we can do here is compare what we wrote for the issue versus how Justice O'Connor stated it in the above excerpt. Let's look at this a little more closely.

It looks like the real issue here is whether or not a "seizure" takes place when the police do what they did in this case on a bus (which might be hard for the person being questioned to leave) as opposed to in an airport lobby (which might be easier for the person being questioned to leave). This whole idea of a seizure under the Fourth Amendment is probably important.

Based on that, we probably should update our issue statement to read as follows:

Does the rule that police officers can question people and request to search their luggage in airport lobbies, which is not considered to be a seizure under the Fourth Amendment to the U.S. Constitution, also apply to police encounters on a bus? Does the fact that such encounter takes place on a bus make it a seizure?

We also have another rule statement to add to our brief. Justice O'Conner cited the case of *California v. Hodari D.*, which gave us the following rule that we should add to our brief:

So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual – it will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.

We also probably should come up with a rule statement about reasonable suspicion, even if we're not quite sure what that means yet. Something like this:

The police do not need reasonable suspicion to participate in a consensual encounter.

So now our brief looks like this:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents. The police officers requested, and according to the facts in evidence were given, consent to search the defendant's suitcase. The police officers told the defendant he had the right to refuse consent. The police officers did not threaten the defendant with a gun. When they searched the defendant's suitcase, the police officers found illegal drugs.
Procedural Posture	Trial court: D pleaded guilty, reserved right to appeal denial of motion to suppress drugs. COA affirmed, certified question to Florida Supreme Court, which ruled that working the buses in this way was unconstitutional because it is a seizure (reasonable passenger would not have felt free to leave the bus). SCOTUS granted cert.
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies, which is not considered to be a seizure under the Fourth Amendment to the U.S. Constitution, also apply to police encounters on a bus? Does the fact that such encounter takes place on a bus make it a seizure?
Rule(s)	<u>Airport Lobby Police Search Request Rule:</u> The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate. <u>Hodari Rule:</u> So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual – it will not trigger Fourth Amendment scrutiny unless it loses its consensual nature. The police do not need reasonable suspicion to participate in a consensual encounter.
Analysis	
Conclusion	

The next excerpt from this case would say this:

> Bostick insists that this case is different because it took place in the cramped confines of a bus. A police encounter is much more intimidating in this setting, he argues, because police tower over a seated passenger and there is little room to move around. … Bostick maintains that a reasonable bus passenger would not have felt free to leave under the circumstances of this case because there is nowhere to go on a bus. Also, the bus was about to depart. Had Bostick disembarked, he would have risked being stranded and losing whatever baggage he had locked away in the luggage compartment.

This section tells us what the defendant in this case argued – WHY he wants the court to rule that he had been seized. Here's why he's making this argument:

- He wants the court to say that the Fourth Amendment is applicable to a situation with these facts.
- He also wants the court to say that, since the police did not have reasonable suspicion in this case, their act of seizing him on the bus violated his Fourth Amendment right to not be subject to an unreasonable seizure.

If you get called on to discuss this case in class, the professor will likely ask you what the defendant's argument is. So you should include it in your brief, wherever it makes sense to you to include it. I would probably include it in the facts section.

D argued that the encounter on the bus was a seizure because the police did not have reasonable suspicion, and that the drugs were found as a result of an illegal search, so they should not have been admissible evidence in his case.

So the updated brief would look like this:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents. The police officers requested, and according to the facts in evidence were given, consent to search the defendant's suitcase. The police officers told the defendant he had the right to refuse consent. The police officers did not threaten the defendant with a gun. When they searched the defendant's suitcase, the police officers found illegal drugs. D argued that the encounter on the bus was a seizure because the police did not have reasonable suspicion, and that the drugs were found as a result of an illegal search, so they should not have been admissible evidence in his case.

Procedural Posture	Trial court: D pleaded guilty, reserved right to appeal denial of motion to suppress drugs. COA affirmed, certified question to Florida Supreme Court, which ruled that working the buses in this way was unconstitutional because it is a seizure (reasonable passenger would not have felt free to leave the bus). SCOTUS granted cert.
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies, which is not considered to be a seizure under the Fourth Amendment to the U.S. Constitution, also apply to police encounters on a bus? Does the fact that such encounter takes place on a bus make it a seizure?
Rule(s)	Airport Lobby Police Search Request Rule: The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate. Hodari Rule: So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual – it will not trigger Fourth Amendment scrutiny unless it loses its consensual nature. The police do not need reasonable suspicion to participate in a consensual encounter.
Analysis	
Conclusion	

The next portion of the case would read as follows:

> When police attempt to question a person who is walking down the street or through an airport lobby, it makes sense to inquire whether a reasonable person would feel free to continue walking. But when the person is seated on a bus and has no desire to leave, the degree to which a reasonable person would feel that he or she could leave is not an accurate measure of the coercive effect of the encounter.
>
> Here, for example, the mere fact that Bostick did not feel free to leave the bus does not mean that the police seized him. Bostick was a passenger on a bus that was scheduled to depart. He would not have felt free to leave the bus even if the police had not been present.
>
> …
>
> In this respect, the Court's decision in *INS v. Delgado* is dispositive. At issue there was the INS' practice of visiting factories at random and questioning employees to determine whether any were illegal aliens. Several INS agents would stand near the building's exits, while other agents walked through the factory questioning workers. The Court acknowledged that the workers may not have been free to leave their worksite, but

explained that this was not the result of police activity: "Ordinarily, when people are at work their freedom to move about has been meaningfully restricted, not by the actions of law enforcement officials, but by the workers' voluntary obligations to their employers." We concluded that there was no seizure because, even though the workers were not free to leave the building without being questioned, the agents' conduct should have given employees "no reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer."

The present case is analytically indistinguishable from *Delgado*. Like the workers in that case, Bostick's freedom of movement was restricted by a factor independent of police conduct—i.e., by his being a passenger on a bus. Accordingly, the "free to leave" analysis on which Bostick relies is inapplicable. In such a situation, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.

Here, the Court gives us another rule for us to add to our brief – the rule from the *Delgado* case. This rule states that, **if a person's freedom to leave is restricted by a factor independent of police conduct, there is no seizure by the police that would trigger Fourth Amendment scrutiny.**

The Court also provides a rule regarding the appropriate analysis when it comes to being questioned on a bus: **the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.**

We also have some analysis here to add to our brief. According to the Court's reasoning, **the freedom to leave a bus to be of the same type (influenced by an action independent of the questioning by the police) as the freedom to leave the workplace. Both are considered to be "voluntary obligations" to stay, rather than leave.**

We can also add some information from earlier in the case to our analysis portion – specifically, about why Bostick not wanting to leave the bus was not based on any behavior by the police.

Based on this content, we can update our brief as follows:

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents. The police officers requested, and according to the facts in evidence were given, consent to search the defendant's suitcase. The police officers told the defendant he had the right to refuse consent. The police officers did not threaten the defendant with a gun. When they searched the defendant's suitcase, the police officers found illegal drugs. D argued that the encounter on the bus was a seizure because the police did not have reasonable suspicion, and that the drugs were found as a result of an illegal search, so they should not have been admissible evidence in his case.

Procedural Posture	Trial court: D pleaded guilty, reserved right to appeal denial of motion to suppress drugs. COA affirmed, certified question to Florida Supreme Court, which ruled that working the buses in this way was unconstitutional because it is a seizure (reasonable passenger would not have felt free to leave the bus). SCOTUS granted cert.
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies, which is not considered to be a seizure under the Fourth Amendment to the U.S. Constitution, also apply to police encounters on a bus? Does the fact that such encounter takes place on a bus make it a seizure?
Rule(s)	Airport Lobby Police Search Request Rule: The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate. Hodari Rule: So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual – it will not trigger Fourth Amendment scrutiny unless it loses its consensual nature. Delgado Rule: If the freedom to leave is restricted by a factor independent of police conduct (like not wanting to leave a workplace when being questioned there by the police because of an obligation to an employer), then it is not a seizure that will trigger Fourth Amendment scrutiny. The police do not need reasonable suspicion to participate in a consensual encounter. In a case with facts like this, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.
Analysis	In this case, whether D felt free to leave the bus was based on the fact that he had bought a ticket to travel to a certain destination, that he did not want to lose the opportunity to travel to that destination at that point in time, and that if he got off the bus he risked not being able to retrieve his luggage. The freedom to leave a bus to be of the same type (influenced by an action independent of the questioning by the police) as the freedom to leave the workplace. Both are considered to be "voluntary obligations" to stay, rather than leave.
Conclusion	

The final section from this case would read as follows:

The facts of this case, as described by the Florida Supreme Court, leave some doubt whether a seizure occurred.

…

Nevertheless, we refrain from deciding whether or not a seizure occurred in this case. The trial court made no express findings of fact, and the Florida Supreme Court rested its decision on a single fact—that the encounter took place on a bus—rather than on the totality of the circumstances. We remand so that the Florida courts may evaluate the seizure question under the correct legal standard.

…

We adhere to the rule that, in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter. That rule applies to encounters that take place on a city street or in an airport lobby, and it applies equally to encounters on a bus. The Florida Supreme Court erred in adopting a per se rule.

The judgment of the Florida Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

So now we know that the case will be sent back to the lower court because the analysis in the prior proceedings focused on the wrong facts. The Court clearly says that **the Florida rule about police questioning on buses being per se unconstitutional was incorrect.** So that should be added to our conclusion.

We also know that **the lower court has to look at the totality of the circumstances in this particular case: a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.** So we can also add that to our brief.

Florida v. Bostick 501 U.S. 429 (1991) Supreme Court of the United States 1991	
Facts	The police officers boarded the bus with badges, insignia, and a gun, and stated that they were police officers/narcotics agents. The police officers requested, and according to the facts in evidence were given, consent to search the defendant's suitcase. The police officers told the defendant he had the right to refuse consent. The police officers did not threaten the defendant with a gun. When they searched the defendant's suitcase, the police officers found illegal drugs. D argued that the encounter on the bus was a seizure because the police did not have reasonable suspicion, and that the drugs were found as a result of an illegal search, so they should not have been admissible evidence in his case.
Procedural Posture	Trial court: D pleaded guilty, reserved right to appeal denial of motion to suppress drugs. COA affirmed, certified question to Florida Supreme Court, which ruled that working the buses in this way was unconstitutional because it is a seizure (reasonable passenger would not have felt free to leave the bus). SCOTUS granted cert.
Issue	Does the rule that police officers can question people and request to search their luggage in airport lobbies, which is not considered to be a seizure under the Fourth Amendment to the U.S. Constitution, also apply to police encounters on a bus? Does the fact that such encounter takes place on a bus make it a seizure?

Rule(s)	Airport Lobby Police Search Request Rule: The Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate. Hodari Rule: So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual – it will not trigger Fourth Amendment scrutiny unless it loses its consensual nature. Delgado Rule: If the freedom to leave is restricted by a factor independent of police conduct (like not wanting to leave a workplace when being questioned there by the police because of an obligation to an employer), then it is not a seizure that will trigger Fourth Amendment scrutiny. The police do not need reasonable suspicion to participate in a consensual encounter. In a case with facts like this, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.
Analysis	In this case, whether D felt free to leave the bus was based on the fact that he had bought a ticket to travel to a certain destination, that he did not want to lose the opportunity to travel to that destination at that point in time, and that if he got off the bus he risked not being able to retrieve his luggage. The freedom to leave a bus to be of the same type (influenced by an action independent of the questioning by the police) as the freedom to leave the workplace. Both are considered to be "voluntary obligations" to stay, rather than leave.
Conclusion	The Florida Supreme Court erred in establishing a rule that police questioning on buses is per se unconstitutional and represents an unreasonable seizure under the Fourth Amendment. A court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter. The case is remanded back to the Florida trial court for reconsideration based on this rule.

Now our brief is done! This should be enough for you to answer any questions that you may be asked by the professor in class for this case.

Florida v. Bostick

501 U.S. 429 (1991)
Supreme Court of the United States
1991

Justice O'Connor delivered the opinion of the Court.

We have held that the Fourth Amendment permits police officers to approach individuals at random in airport lobbies and other public places to ask them questions and to request consent to search their luggage, so long as a reasonable person would understand that he or she could refuse to cooperate. This case requires us to determine whether the same rule applies to police encounters that take place on a bus.

In this case, two officers discovered cocaine when they searched a suitcase belonging to Terrance Bostick. The underlying facts of the search are in dispute, but the Florida Supreme Court, whose decision we review here, stated explicitly the factual premise for its decision:

> " 'Two officers, complete with badges, insignia and one of them holding a recognizable zipper pouch, containing a pistol, boarded a bus bound from Miami to Atlanta during a stopover in Fort Lauderdale. Eyeing the passengers, the officers, admittedly without articulable suspicion, picked out the defendant passenger and asked to inspect his ticket and identification. The ticket, from Miami to Atlanta, matched the defendant's identification and both were immediately returned to him as unremarkable. However, the two police officers persisted and explained their presence as narcotics agents on the lookout for illegal drugs. In pursuit of that aim, they then requested the defendant's consent to search his luggage. Needless to say, there is a conflict in the evidence about whether the defendant consented to the search of the second bag in which the contraband was found and as to whether he was informed of his right to refuse consent. However, any conflict must be resolved in favor of the state, it being a question of fact decided by the trial judge.' "

Two facts are particularly worth noting. First, the police specifically advised Bostick that he had the right to refuse consent. Bostick appears to have disputed the point, but, as the Florida Supreme Court noted explicitly, the trial court resolved this evidentiary conflict in the State's favor. Second, at no time did the officers threaten Bostick with a gun. The Florida Supreme Court indicated that one officer carried a zipper pouch containing a pistol—the equivalent of carrying a gun in a holster—but the court did not suggest that the gun was ever removed from its pouch, pointed at Bostick, or otherwise used in a threatening manner.

Bostick was arrested and charged with trafficking in cocaine. He moved to suppress the cocaine on the grounds that it had been seized in violation of his Fourth Amendment rights. The trial court denied the motion but made no factual findings. Bostick subsequently entered a plea of guilty, but reserved the right to appeal the denial of the motion to suppress.

The Florida District Court of Appeal affirmed, but considered the issue sufficiently important that it certified a question to the Florida Supreme Court. The Supreme Court reasoned that Bostick had been

seized because a reasonable passenger in his situation would not have felt free to leave the bus to avoid questioning by the police. It ruled categorically that " 'an impermissible seizure result[s] when police mount a drug search on buses during scheduled stops and question boarded passengers without articulable reasons for doing so, thereby obtaining consent to search the passengers' luggage.' " The Florida Supreme Court thus adopted a per se rule that the Broward County Sheriff's practice of "working the buses" is unconstitutional….We granted certiorari to determine whether the Florida Supreme Court's per se rule is consistent with our Fourth Amendment jurisprudence.

The sole issue presented for our review is whether a police encounter on a bus of the type described above necessarily constitutes a "seizure" within the meaning of the Fourth Amendment.

…

Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free "to disregard the police and go about his business," California v. Hodari D., 499 U.S. 621, 628 (1991), the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.

…

There is no doubt that if this same encounter had taken place before Bostick boarded the bus or in the lobby of the bus terminal, it would not rise to the level of a seizure.

Bostick insists that this case is different because it took place in the cramped confines of a bus. A police encounter is much more intimidating in this setting, he argues, because police tower over a seated passenger and there is little room to move around. … Bostick maintains that a reasonable bus passenger would not have felt free to leave under the circumstances of this case because there is nowhere to go on a bus. Also, the bus was about to depart. Had Bostick disembarked, he would have risked being stranded and losing whatever baggage he had locked away in the luggage compartment.

When police attempt to question a person who is walking down the street or through an airport lobby, it makes sense to inquire whether a reasonable person would feel free to continue walking. But when the person is seated on a bus and has no desire to leave, the degree to which a reasonable person would feel that he or she could leave is not an accurate measure of the coercive effect of the encounter.

Here, for example, the mere fact that Bostick did not feel free to leave the bus does not mean that the police seized him. Bostick was a passenger on a bus that was scheduled to depart. He would not have felt free to leave the bus even if the police had not been present.

…

In this respect, the Court's decision in *INS v. Delgado* is dispositive. At issue there was the INS' practice of visiting factories at random and questioning employees to determine whether any were illegal aliens. Several INS agents would stand near the building's exits, while other agents walked through the factory questioning workers. The Court acknowledged that the workers may not have been free to leave their worksite, but explained that this was not the result of police activity: "Ordinarily, when people are at work their freedom to move about has been meaningfully restricted, not by the actions of law enforcement officials, but by the workers' voluntary obligations to their employers." We concluded that

there was no seizure because, even though the workers were not free to leave the building without being questioned, the agents' conduct should have given employees “no reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer.”

The present case is analytically indistinguishable from *Delgado*. Like the workers in that case, Bostick's freedom of movement was restricted by a factor independent of police conduct—i.e., by his being a passenger on a bus. Accordingly, the “free to leave” analysis on which Bostick relies is inapplicable. In such a situation, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.

The facts of this case, as described by the Florida Supreme Court, leave some doubt whether a seizure occurred.

…

Nevertheless, we refrain from deciding whether or not a seizure occurred in this case. The trial court made no express findings of fact, and the Florida Supreme Court rested its decision on a single fact—that the encounter took place on a bus—rather than on the totality of the circumstances. We remand so that the Florida courts may evaluate the seizure question under the correct legal standard.

…

We adhere to the rule that, in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter. That rule applies to encounters that take place on a city street or in an airport lobby, and it applies equally to encounters on a bus. The Florida Supreme Court erred in adopting a per se rule.

The judgment of the Florida Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.