

IN TWO CASES, U.S. SUPREME COURT RULES SEARCHES UNLAWFUL *Stop and Frisk*

The United States Supreme Court recently decided two cases dealing with searches. The first case, *Florida v. J.L.*, No. 98-1993 (March 28, 2000), involved a stop and frisk. The Miami-Dade police received an anonymous phone call reporting that a young black male standing at a particular bus stop, and wearing a plaid shirt, was carrying a gun. Nothing was known about the informant. The police arrived at the bus stop and saw three black males, one of whom was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any of the three of criminal behavior. One of the officers frisked J.L. and discovered a gun in his pocket. J.L. was charged with carrying a concealed firearm without a license and possessing a firearm while under the age of 18. At trial, he moved to suppress evidence of the gun as resulting from an unlawful search. Both the trial court and the Florida Supreme Court agreed that the search was unlawful, and the case was appealed to the U.S. Supreme Court.

The Supreme Court reviewed the law on anonymous tips, which requires that the tip must exhibit enough “indicia of reliability” to provide a police officer with reasonable suspicion to stop a person. Reasonableness is measured by what the officers know before they conduct their search. A tip must also be reliable in giving a *reason to suspect criminal activity*, not just a way to identify a particular person. Here, the informant was “unknown [and] unaccountable” and did not explain how he knew about the gun nor provide any “inside information” about J.L. The Court concluded that the minimal nature of the tip did not provide enough reasonable suspicion to justify the stop and frisk.

The Court contrasted this case with *Alabama v. White*, 496 U.S. 325 (1990). In *White*, the police received an anonymous tip that a woman was carrying cocaine and that she would leave a particular building at a particular time, get into a described car, and drive to a named motel. The Court explained that standing alone, the tip would not have justified a stop. But after the police had observed the woman, and realized that the informant had accurately predicted her movements, it became reasonable to think that the tipster had inside knowledge about the woman. The Court described *White* as a close case, noting that knowledge about a person’s future movements indicates some familiarity with the person, but does not necessarily indicate that the informant knows about criminal activity. The Court explained that the “moderate indicia of reliability” that were present in the *White* case were absent in *Florida v. J.L.*

Police officers must exercise care when evaluating anonymous tips; this case sheds some light on what factors should be considered. The Court made clear that this decision does *not* affect an officer’s right to frisk a person who has been legitimately stopped. It only deals with cases in which the officer’s authority to make the initial stop is at issue.

Inspection of Luggage

The second U.S. Supreme Court case involved physical manipulation of a bus passenger’s carry-on luggage by a law enforcement officer. *Bond v. United States*, No. 98-9349 (April 17, 2000). In this case, a border patrol agent lawfully entered the bus near the Mexican border to check the passengers’ immigration status. After he confirmed that all the passengers were legally in the United States, he walked toward the front of the bus and squeezed the passengers’ soft luggage that was in the overhead storage space. He discovered that the bag belonging to Mr. Bond contained a hard “brick-like” object. He then opened the bag, with Mr. Bond’s permission, and found a “brick” of methamphetamine. Mr. Bond was charged with possession with intent to distribute, and he moved to suppress the drugs on the ground that the agent had conducted an illegal search. The Supreme Court, in a 7-2 decision, agreed that the search was unlawful, thereby reversing the decision of the Court of Appeals.

The Fourth Amendment to the U.S. Constitution protects people’s “effects” from unreasonable searches and seizures. A traveler’s luggage is an “effect” protected by the Fourth Amendment - in other words, the owner has a privacy interest in his luggage. Here, Mr. Bond had shown that he expected privacy by using a soft, opaque bag and placing it directly above his seat. The Court found that this expectation of privacy is reasonable, noting that “physically invasive” inspection is more intrusive than visual inspection. The Court contrasted ways in which luggage is handled:

“When a bus passenger places a bag in an overhead bin, he expects that other passengers or bus employees may move it for one reason or another. Thus, a bus passenger clearly expects that his bag may be handled. He does not expect that other passengers or bus employees will, as a matter of course, feel the bag in an exploratory manner. But this is exactly what the agent did here. We therefore hold that the agent’s physical manipulation of [Mr. Bond’s] bag violated the Fourth Amendment.”

This case makes clear that law enforcement officials have no authority to physically manipulate travelers' carry-on luggage without some legal basis for doing so.

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