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Greyhound Terminals: America's New Border Checkpoints?

By Carlos Williams, Assistant
Federal Defender.

After Florida v. Bostick, 501 U.S. 429 (1991), commentators predicted that: "Americans could very well find themselves in a position where encounters with police officers, who desire to subject them to random searches and seizures, will be an expense of traveling in this country."

* School days, I believe, are the unhappiest in the whole span of human existence. They are full of dull unintelligible tasks, new and unpleasant

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ordinances, brutal violations of common sense and common decency. H.L. Mencken. See Florida v. Bostick: Swapping-Off Point for Fourth Amendment Protections? 52 La.L.Rev. 1183, 1201 (1992).

What was once feared is now a reality for Greyhound bus travelers. Instead of Bostick's one-to-one officer/citizen encounter, Mobile police now detain disembarking passengers to conduct mass suspicionless searches of on-board luggage. However, while Bostick, and a variety of police bus sweeping methods share the vehicle as the situs of police action, they don't all fit in Bostick's shoe and may exceed constitutional limitations.

In Mobile, police board incoming buses, stand at the front of the narrow aisle, announce their involvement in drug interdiction and request to search on board luggage. Then they instruct passengers to open their luggage and place it on their laps for inspection. Although the police claim to request "cooperation or consent," commandeering the bus for a suspicionless dragnet search may be a seizure subject to the fourth amendment. See LaFave, Search and Seizure, § 9.2(A)(c) at 136 (2d ed. 1987). This issue is now on appeal in the Eleventh Circuit, and a copy of the brief is available from the

author.

By detaining and searching all passengers, police conduct the equivalent of a border stop and search in Mobile. What's wrong with this picture? Unlike border searches, persons within the country have a right to free passage without interruption or search absent reasonable suspicion to believe they are engaged in illicit activity. See Carrol v. United States, 267 U.S. 132, (1925). U.S. v. Martinez-Fuerte, 428 U.S. 543 (1979). Since Carroll, varying degrees of privacy standards have been applied in police/citizens encounters. See Ybarra v. Illinois, 444 U.S. 85 (1979) (Invalidating a mass suspicionless patdown in a tavern); compare, Michigan Dept. Of State Police v. Sitz, 496 U.S. 44 (1990) (Upholding a brief and easily avoidable detention to observe signs of intoxication); Matinez-Fuerte, supra (A brief interrogation at a border checkpoint).

The legality of mass detentions and searches must be determined by weighing the public interest being served by the practice, against the Fourth Amendment interest of the affected individual(s). Camara v. Municipal Court, 387 U.S. 523, (1967). The balancing test also requires an assessment of the "degree to which the seizure advances the public interest," in

the sense of accomplishing that which more traditional (or less intrusive) enforcement would not. Delaware v. Prouse, 440 U.S. 648, 660 (1979). Given the variety of traditional enforcement tools available, (one-on-one encounters with passengers in the terminal or on the bus, the use of drug dogs on the luggage while the bus is serviced), the government must show compelling reasons for adopting the most expansive and intrusive method: mass detentions and searches.

Practice Pointers: (in preparation for motion to suppress): (1) Obtain a copy of the bus ticket or those attached to the luggage; (2) Identify and locate the bus driver (a subpoena is necessary to get any information from Greyhound and it must be directed to Greyhound Operations Attn: Rosemary Camp, 15110 North Dallas Parkway, Dallas, Texas 75248; (3) Identify any other known passengers. Bus passengers vanish quickly and without trace. It appears that addresses are not kept by the company; (4) Establish whether: (a) drug detecting dogs were used or available, (b) did they approach one individual? (c) did they detain or restrict free passage of all passengers?, (d) Is consent to search explicit or presumed? (e) Timing of confrontation: incoming or departing bus? Passengers disembarking or awaiting departure? (f) Language used by police in making the announcement, (g) officers, how many, uniformed, armed?

Reversible Errors

United States v. Meacham, 115 F.3d 1488 (10th Cir. 1997) (Transportation of a child, not involving prostitution or production of a visual depiction, required cross reference to lower base level for sexual contact).

United States v. Montilla-Rivera, 115 F.3d 1060 (1st Cir. 1997) (Exculpatory affidavits of codefendants, who claimed Fifth Amendment privilege, were newly discovered evidence for a motion for new trial).

United States v. Reyes, 116 F.3d 67 (2d Cir. 1997) (The court failed to adequately explain its sentence).

United States v. Perez, 116 F.3d 840 (9th Cir. 1997) (Failure to instruct jury on use of firearm, in relation to, drugtrafficking was plain error).

United States v. Sepulveda, 115 F.3d 882 (11th Cir. 1997) (Evidence did not support the alleged volume of unauthorized calls).

United States v. Sawyer, 115 F.3d 857 (11th Cir. 1997) (1. Sentencing increase for reckless endangerment only applies to defendant fleeing law enforcement officer; 2. Enhancement for bodily injury was not supported by alleged psychological injury) (Dan Wannamaker AFD).

United States v. Jackson, 115 F.3d 843 (11th Cir. 1997) (Package containing 1% cocaine and 99% sugar was not a mixture under the guidelines).

United States v. Alvarez,

115 F.3d 839 (11th Cir. 1997) (A 5K1.1 motion rewards assistance prior to sentencing, while a Rule 35 (b) motion rewards assistance after sentencing. Forcing a defendant to choose when the government would seek a reduction was error).

United States v. Nash, 115 F.3d 1431 (9th Cir. 1997) (Multiplicious counts must be sentenced concurrently and may not receive separate special assessments).

United States v. Ooley, 116 F.3d 370 (9th Cir. 1997) (A probationer was entitled to a hearing over a warrantless search).

United States v. Wilson, 116 F.3d 1066 (5th Cir. 1997) (A defendant, who needed codefendants' testimony to support his self-defense claim, should have been severed).

United States v. Yoakum, 116 F.3d 1346 (10th Cir. 1997) (A defendant's interest in a business, and his presence near time of fire, did not support arson conviction).

United States v. Gaviria, 116 F.3d 1498 (D.C. 1997) (Counsel was ineffective for giving incorrect sentencing information in contemplation of plea).

United States v. Castillo-Garcia, 117 F.3d 1179 (10th Cir.), cert. denied, 1997 WL 629884 (1997) (The government failed to show the necessity for wiretaps).

United States v. Carter, 117 F.3d 262 (5th Cir. 1997) (A pistol found in a glove compartment was not used in connection with a drug crime).

United States v. Grossman, 117 F.3d 255 (5th

Cir. 1997) (Personal use of funds from business loan was not bank fraud).

United States v.

Granados, 117 F.3d 1089 (8th Cir. 1997) (The court failed to make specific drug quantity findings).

United States v. Boe,

117 F.3d 830 (5th Cir. 1997) (Absent an upward departure, the court could not refuse to reduce a sentence pursuant to a guideline amendment).

United States v. Reyna-

Espinosa, 117 F.3d 826 (5th Cir. 1997) (A prior conviction for being an alien in unlawful possession of a firearm was not an aggravated felony).

United States v.

Jackson, 117 F.3d 533 (11th Cir. 1997) (A police officer convicted of theft should not have been sentenced under civil rights guidelines).

United States v. Brown,

117 F.3d 471 (11th Cir. 1997) (Misinformation given to the defendant made his plea involuntary).

United States v.

Sassanelli, 118 F.3d 495 (6th Cir. 1997) (Obstruction findings did not specify which statements were materially untruthful).

United States v.

Stephens, 118 F.3d 479 (6th Cir. 1997) (Two separate caches of cocaine possessed on the same day, did not support two separate gun enhancements).

United States v. Spruill,

118 F.3d 221 (4th Cir. 1997) (There was insufficient evidence that a threat would be carried out by fire or explosive under 18 U.S.C. §844 (e)).

United States v. Garza,

118 F.3d 278 (5th Cir. 1997)

(Money laundering proof was insufficient where defendants neither handled nor disposed of drug proceeds).

United States v. Polk,

118 F.3d 286 (5th Cir. 1997) (Presence of shotgun in defendant's car did not support carrying firearm in relation to crime of violence).

United States v. Arce,

118 F.3d 335 (5th Cir. 1997) (Manufacturing firearms is not a basis for upward departure).

United States v. High,

117 F.3d 464 (11th Cir. 1997) (A money laundering instruction omitted the element of willfulness).

United States v. Mendez,

117 F.3d 480 (11th Cir. 1997) (Simultaneous acts of possessing stolen mail and assaulting a mail carrier with intent to steal mail, could not receive cumulative punishments).

Blaik v. United States,

117 F.3d 1288 (11th Cir. 1997) (Restitution was limited to offense of conviction).

United States v. Wright,

117 F.3d 1265 (11th Cir. 1997) (Assertion of a legal argument is not a basis for denying acceptance of responsibility).

United States v. Steele,

117 F.3d 1231 (11th Cir. 1997) (The indictment failed to allege a pharmacist acted outside the scope of his professional practice).

United States v. Arnold,

117 F.3d 1308 (11th Cir. 1997) (A prosecutor withheld exculpatory tapes of government witnesses).

United States v. White,

118 F.3d 739 (11th Cir. 1997) (The Sentencing Commission's "undervaluation" of a guideline

range was not a ground for upward departure).

Subscription Policy

Recently, I received letters from inmates requesting subscriptions to this publication. I have mixed feelings. On one hand, I am sympathetic that inmates are generally without access to current legal developments that may affect their cases. On the other hand, I have a small office, and the physical labor of publishing and distributing on any greater scale could quickly become unworkable.

Therefore, if an inmate wishes to send a self-addressed envelope, I will send several previous issues to them. I will continue this policy, unless demand becomes too great.

I will send a subscription of this newsletter to any attorney who represents indigent federal criminal defendants. Simply send me a letter asking for a subscription.

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Editor: Alexander Bunin
Southern District of Alabama
Federal Defenders Organization
2 South Water Street, 2d Floor
Mobile, AL 36602
(334) 433-0910
(334) 433-0686 FAX