

**Bond v. United States**  
(April 17, 2000) \_\_ US \_\_

**ISSUE**

Does a "search" occur when an officer picks up a person's soft luggage and squeezes it to determine whether it contains drugs?

**FACTS**

Bond was a passenger on a Greyhound bus traveling from California to Arkansas. When the bus stopped at a Border Patrol checkpoint in Texas, a Border Patrol agent entered the bus to speak with the passengers to make sure they were all lawfully in the United States. Having done so, the agent was walking to the front of the bus when he began squeezing the soft luggage which the passengers had placed in the overhead storage bins. The agent testified this was standard procedure, that border patrol officers routinely "conduct an inspection of the overhead luggage by squeezing the bags as we're going out."

As the agent squeezed Bond's luggage, he felt a "brick-like." He then asked Bond if he could search the bag and Bond said okay. Inside the bag the agent found a "brick" of methamphetamine.

**DISCUSSION**

Bond contended that when the agent picked up his luggage and squeezed it, he was conducting a "search." And because the agent lacked a warrant, consent, or exigent circumstances, the squeezing was unlawful. The United States Supreme Court agreed.

Under the Fourth Amendment, a "search" occurs when officers intrude into a place or thing in which a person has a reasonable expectation of privacy.<sup>(1)</sup> So the issue in this case was whether Bond reasonably expected that his luggage would not be probed to the extent it was probed by the Border Patrol agent.

The Government argued that Bond could not reasonably expect that his luggage would be free from some sort of physical manipulation because, for various reasons, it is quite common for bus company employees or other passengers to pick up or move luggage that has been placed in overhead bins. The Court acknowledged this was true. As it pointed out, "When a bus passenger places a bag in an overhead bin, he expects that other passengers or bus company employees may move it for one reason or another."

The Court added, however, this does not mean passengers expect their luggage will be "pat searched" or otherwise "felt in an exploratory manner. But," said the Court, "this is exactly what the agent did here. We therefore hold that the agent's physical manipulation of petitioner's bag violated the Fourth Amendment."<sup>(2)</sup>

**DA's COMMENT**

In his dissenting opinion, Justice Breyer made an interesting point: in this day and age in which planes and buses are tightly crammed with passengers and carry-on luggage, the luggage is exposed to far more

probing and manipulation than the majority seems to realize. Breyer then noted some excerpts from articles on the subject, including the following:

- "Any person who has traveled on a common carrier knows that luggage placed in an overhead compartment is always at the mercy of all people who want to rearrange or move previously placed luggage." U.S. v. McDonald (7th Cir. 1996) 100 F.3d 1320, 1327.
- "It's dog-eat-dog trying to cram half your home into overhead compartments." Eagan, Familiar Anger Takes Flight with Airline Tussles, *Boston Herald*, August 15, 1999.
- "Flight attendant rearranged the contents of three different overhead compartments to free up some room and then shoved and pounded until the bag squeezed in." Flynn, Confessions of a Once-Only Carry-On Guy, *San Francisco Examiner*, September 6, 1998.

One other thing: It is at least arguable that Bond's decision to consent to a search of his luggage was either, (1) not the "fruit" of the pat search of his luggage, or (2) that his consent constituted an independent intervening act that broke the chain of causation. The Court noted, however, the Government did not raise these issues. At fn.1.

(1) See *Rakas v. Illinois* (1978) 439 US 128, 148; *Rawlings v. Kentucky* (1980) 448 US 98, 104; *United States v. Payner* (1980) 447 US 727, 731; *United States v. Salvucci* (1980) 448 US 83; *United States v. Miller* (1976) 425 US 435, 440 ["[N]o interest legitimately protected by the Fourth Amendment is implicated by governmental investigative activities unless there is an intrusion into a zone of privacy, into the security a man relies upon when he places himself or his property within a constitutionally protected area."]; *Vernonia School Dist. v. Acton* (1995) 515 US 646, 654 ["The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as 'legitimate.'"]; *Minnesota v. Carter* (1998) 525 US \_\_ [142 L.Ed.2d 373, 379]; *People v. Roybal* (1998) 19 Cal.4th 481, 707; *People v. Hernandez* (1988) 199 Cal.App.3d 1182, 1189; *In re Baraka H.* (1992) 6 Cal.App.4th 1039, 1044; *People v. Ooley* (1985) 169 Cal.App.3d 197, 202; *People v. Thomas* (1995) 38 Cal.App.4th 1331, 1334; *People v. Shepherd* (1994) 23 Cal.App.4th 825, 828; *United States v. Taketa* (9th Cir. 1991) 923 F.2d 665669-70 ["(T)o say that a party lacks Fourth Amendment standing is to say that his reasonable expectation of privacy has not been infringed. It is with this understanding that we use 'standing' as a shorthand term."].

(2) **NOTE:** The Government also argued that the luggage was essentially in plain view; thus, Bond could not expect it would remain private. While it was undoubtedly true that the exterior of the luggage was in plain view, the Court noted that Bond's brick of methamphetamine was not visible to the naked eye and was not in plain view.