

The present case begins where our prior cases left off. Here there is no question that the initial stop was based on reasonable suspicion, satisfying the Fourth Amendment requirements noted in *Brown v. Texas*. . . . As we understand it, the statute does not require a suspect to give the officer a driver's license or any other document. Provided that the suspect either states his name or communicates it to the officer by other means—a choice, we assume, that the suspect may make—the statute is satisfied and no violation occurs. . . .

Asking questions is an essential part of police investigations. In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment. . . .

. . . Identity may prove particularly important in cases such as this, where the police are investigating what appears to be a domestic assault. Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.

Although it is well established that an officer may ask a suspect to identify himself in the course of a *Terry* stop, it has been an open question whether the suspect can be arrested and prosecuted for refusal to answer. Petitioner draws our attention to statements in prior opinions that, according to him, answer the question in his favor. In *Terry*, Justice White stated in a concurring opinion that a person detained in an investigative stop can be questioned but is “not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest.” The

Court cited this opinion in dicta in *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984), a decision holding that a routine traffic stop is not a custodial stop. . . . [T]he Court suggested reasons why *Terry* stops have a “nonthreatening character,” among them the fact that a suspect detained during a *Terry* stop “is not obliged to respond” to questions. According to petitioner, these statements establish a right to refuse to answer questions during a *Terry* stop.

We do not read these statements as controlling. . . .

Petitioner's concerns are met by the requirement that a *Terry* stop must be justified at its inception and “reasonably related in scope to the circumstances which justified” the initial stop. Under these principles, an officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop. [For example,] *Terry* may permit an officer to determine a suspect's identity by compelling the suspect to submit to fingerprinting only if there is “a reasonable basis for believing that fingerprinting will establish or negate the suspect's connection with that crime.” It is clear in this case that the request for identification was “reasonably related in scope to the circumstances which justified” the stop. The officer's request was a commonsense inquiry, not an effort to obtain an arrest for failure to identify after a *Terry* stop yielded insufficient evidence. The stop, the request, and the State's requirement of a response did not contravene the guarantees of the Fourth Amendment.

10.5 Florida v. Bostick 489 U.S. 656 (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.

I

Drug interdiction efforts have led to the use of police surveillance at airports, train stations, and bus depots. Law enforcement officers stationed at such locations routinely approach individuals,

Some footnotes and case citations have been omitted.—ED.

either randomly or because they suspect in some vague way that the individuals may be engaged in criminal activity, and ask them potentially incriminating questions. Broward County has adopted such a program. County Sheriff's Department officers routinely board buses at scheduled stops and ask passengers for permission to search their luggage.

In this case, two officers discovered cocaine when they searched a suitcase belonging to Terrence 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," 554 So. 2d 1153, 1154-1155 (1989), quoting 510 So. 2d 321, 322 (Fla. App. 1987) (Letts, J., *dissenting in part*). . . .

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] 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. . . .

II

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. The State concedes, and we accept for purposes of this decision, that the officers lacked the reasonable suspicion required to justify a seizure and that, if a seizure took place, the drugs found in Bostick's suitcase must be suppressed as tainted fruit.

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," . . . the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature. The Court made precisely this point in *Terry v. Ohio*, 392 U.S. 1, 19, n. 16 (1968): "Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."

Since *Terry*, we have held repeatedly that mere police questioning does not constitute a seizure. In *Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion), for example, we explained that "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." *Id.*, at 497; see *id.*, at 523, n. 3 (REHNQUIST, J., *dissenting*).

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 Court has dealt with similar encounters in airports and has found them to be “the sort of consensual encounters that implicate no Fourth Amendment interest,” *Florida v. Rodriguez*, 469 U.S. 1, 5–6 (1984). We have stated that even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, see *INS v. Delgado*, 466 U.S. 210, 216 (1984); *Rodriguez*, *supra*, at 5–6; ask to examine the individual’s identification, see *Delgado*, *supra*, at 216; *Royer*, *supra*, at 501 (plurality opinion); *United States v. Mendenhall*, 446 U.S. 544, 557–558 (1980); and request consent to search his or her luggage, see *Royer*, *supra*, at 501 (plurality opinion)—as long as the police do not convey a message that compliance with their requests is required.

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 claims to find support in language from *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988), and other cases, indicating that a seizure occurs when a reasonable person would believe that he or she is not “free to leave.” 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.

The Florida Supreme Court found this argument persuasive, so much so that it adopted a *per se* rule prohibiting the police from randomly boarding buses as a means of drug interdiction. The state court erred, however, in focusing on whether Bostick was “free to leave” rather than on the principle that those words were intended to capture. 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. . . .

. . . 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. This formulation follows logically from prior cases and breaks no new ground. We have said before that the crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would “have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” . . .

The facts of this case, as described by the Florida Supreme Court, leave some doubt whether a seizure occurred. Two officers walked up to Bostick on the bus, asked him a few questions, and asked if they could search his bags. As we have explained, no seizure occurs when police ask questions of an individual, ask to examine the individual’s identification, and request consent to search his or her luggage—so long as the officers do not convey a message that compliance with their requests is required. Here, the facts recited by the Florida Supreme Court indicate that the officers did not point guns at Bostick or otherwise threaten him and that they specifically advised Bostick that he could refuse consent.

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. . . .

The dissent characterizes our decision as holding that police may board buses and by an “intimidating show of authority,” *post*, at 8 (emphasis added), demand of passengers their “voluntary” cooperation. That characterization is incorrect. Clearly, a bus passenger’s decision to cooperate with law enforcement officers authorizes the police to conduct a search without first obtaining a

warrant *only* if the cooperation is voluntary. "Consent" that is the product of official intimidation or harassment is not consent at all. Citizens do not forfeit their constitutional rights when they are coerced to comply with a request that they would prefer to refuse. The question to be decided by the Florida courts on remand is whether Bostick chose to permit the search of his luggage. . . .

The dissent reserves its strongest criticism for the proposition that police officers can approach individuals as to whom they have no reasonable suspicion and ask them potentially incriminating questions. But this proposition is by no means novel; it has been endorsed by the Court any number of times. *Terry*, *Royer*, *Rodriguez*, and *Delgado* are just a few examples. As we have explained, today's decision follows logically from those decisions and breaks no new ground. . . .

This Court, as the dissent correctly observes, is not empowered to suspend constitutional guarantees so that the Government may more effectively wage a "war on drugs." See *post*, at 1, 11–12. If that war is to be fought, those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime. By the same token, this Court is not empowered to forbid law enforcement practices simply because it considers them distasteful. The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation. The cramped confines of a bus are one relevant factor that should be considered in evaluating whether a passenger's consent is voluntary. We cannot agree, however, with the Florida Supreme Court that this single factor will be dispositive in every case.

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 remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE MARSHALL, *with whom* JUSTICE BLACKMUN *and* JUSTICE STEVENS *join, dissenting.*

Our Nation, we are told, is engaged in a "war on drugs." No one disputes that it is the job of law-enforcement officials to devise effective weapons for fighting this war. But the effectiveness of a law-enforcement technique is not proof of its constitutionality. The general warrant, for example, was certainly an effective means of law enforcement. Yet it was one of the primary aims of the Fourth Amendment to protect citizens from the tyranny of being singled out for search and seizure without particularized suspicion *notwithstanding* the effectiveness of this method. In my view, the law-enforcement technique with which we are confronted in this case—the suspicionless police sweep of buses in intrastate or interstate travel—bears all of the indicia of coercion and unjustified intrusion associated with the general warrant. Because I believe that the bus sweep at issue in this case violates the core values of the Fourth Amendment, I dissent.

I

At issue in this case is a "new and increasingly common tactic in the war on drugs": the suspicionless police sweep of buses in interstate or intrastate travel. . . . Typically under this technique, a group of state or federal officers will board a bus while it is stopped at an intermediate point on its route. Often displaying badges, weapons or other indicia of authority, the officers identify themselves and announce their purpose to intercept drug traffickers. They proceed to approach individual passengers, requesting them to show identification, produce their tickets, and explain the purpose of their travels. Never do the officers advise the passengers that they are free not to speak with the officers. An "interview" of this type ordinarily culminates in a request for consent to search the passenger's luggage. . . .

These sweeps are conducted in "dragnet" style. The police admittedly act without an "artic-

ulable suspicion" in deciding which buses to board and which passengers to approach for interviewing.¹ By proceeding systematically in this fashion, the police are able to engage in a tremendously high volume of searches. See, e.g., *Florida v. Kerwick*, 512 So. 2d 347, 348–349 (Fla. App. 1987) (single officer employing sweep technique able to search over 3,000 bags in nine-month period). The percentage of successful drug interdictions is low. See *United States v. Flowers, supra*, at 710 (sweep of 100 buses resulted in seven arrests).

To put it mildly, these sweeps "are inconvenient, intrusive, and intimidating." *United States v. Chandler*, 744 F. Supp. at 335. They occur within cramped confines, with officers typically placing themselves in between the passenger selected for an interview and the exit of the bus. See, e.g., *id.*, at 336. Because the bus is only temporarily stationed at a point short of its destination, the passengers are in no position to leave as a means of evading the officers' questioning. Undoubtedly, such a sweep holds up the progress of the bus. See *United States v. Fields*, 909 F. 2d 470, 474 n. 2 (CA11 1990); cf. *United States v. Rembert*, 694 F. Supp. 163, 175 (WDNC 1988) (reporting testimony of officer that he makes "every effort in the world not to delay the bus" but that the driver does not leave terminal until sweep is complete). Thus, this "new and increasingly common tactic," *United States v. Lewis*, . . . bur-

dens the experience of traveling by bus with a degree of governmental interference to which, until now, our society has been proudly unaccustomed. See, e.g., *State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, 6, 663 P. 2d 992, 997 (1983) (Feldman, J., concurring) ("The thought that an American can be compelled to 'show his papers' before exercising his right to walk the streets, drive the highways or board the trains is repugnant to American institutions and ideals.")

This aspect of the suspicionless sweep has not been lost on many of the lower courts called upon to review the constitutionality of this practice. Remarkably, the courts located at the heart of the "drug war" have been the most adamant in condemning this technique. As one Florida court put it:

"[T]he evidence in this cause has evoked images of other days, under other flags, when no man traveled his nation's roads or railways without fear of unwarranted interruption, by individuals who held temporary power in the Government. The spectre of American citizens being asked, by badge-wielding police, for identification, travel papers—in short a *raison d'être*—is foreign to any fair reading of the Constitution, and its guarantee of human liberties. This is not Hitler's Berlin, nor Stalin's Moscow, nor is it white supremacist South Africa. Yet in Broward County, Florida, these police officers approach every person on board buses and trains ("that time permits") and check identification [and] tickets, [and] ask to search luggage—all in the name of "voluntary cooperation" with law enforcement. . . ." 554 So. 2d, at 1158, quoting *State v. Kerwick, supra*, at 348–349 (quoting trial court order).

The District Court for the District of Columbia spoke in equally pointed words:

"It seems rather incongruous at this point in the world's history that we find totalitarian states becoming more like our free society while we in this nation are taking on their former trappings of suppressed liberties and freedoms."

"The random indiscriminate stopping and questioning of individuals on interstate busses

¹That is to say, the police who conduct these sweeps decline to offer a reasonable, articulable suspicion of criminal wrongdoing sufficient to justify a warrantless "stop" or "seizure" of the confronted passenger. See *Terry v. Ohio*, 392 U.S. 1, 20–22, 30–31 (1968); *Florida v. Royer*, 460 U.S. 491, 498–499 (1983) (plurality opinion). It does not follow, however, that the approach of passengers during a sweep is completely random. Indeed, at least one officer who routinely confronts interstate travelers candidly admitted that race is a factor influencing his decision whom to approach. See *United States v. Williams*, No. 1:89CR0135 (ND Ohio, June 13, 1989), p. 3 ("Detective Zaller testified that the factors initiating the focus upon the three young black males in this case included: (1) that they were young and black. . . ."), *aff'd*, No. 89–4083 (CA6, Oct. 19, 1990), p. 7 (the officers "knew that the couriers, more often than not, were young black males"), vacated and remanded, 500 U.S. 901 (1991). Thus, the basis of the decision to single out particular passengers during a suspicionless sweep is less likely to be *inarticulable* than *unspeakable*.

seems to have gone too far. If this Court approves such 'bus stops' and allows prosecutions to be based on evidence seized as a result of such 'stops,' then we will have stripped our citizens of basic Constitutional protections. Such action would be inconsistent with what this nation has stood for during its 200 years of existence. If passengers on a bus passing through the Capital of this great nation cannot be free from police interference where there is absolutely no basis for the police officers to stop and question them, then the police will be free to accost people on our streets without any reason or cause. In this 'anything goes' war on drugs, random knocks on the doors of our citizens' homes seeking 'consent' to search for drugs cannot be far away. This is not America." *United States v. Lewis*, 728 F. Supp. 784, 788-789, rev'd, 287 U.S. App. D.C. 306, 921 F.2d 1294 (1990). . . .

The question for this Court, then, is whether the suspicionless, dragnet-style sweep of buses in intrastate and interstate travel is consistent with the Fourth Amendment. The majority suggests that this latest tactic in the drug war is perfectly compatible with the Constitution. I disagree.

II

I have no objection to the manner in which the majority frames the test for determining whether a suspicionless bus sweep amounts to a Fourth Amendment "seizure." I agree that the appropriate question is whether a passenger who is approached during such a sweep "would feel free to decline the officers' requests or otherwise terminate the encounter." . . . What I cannot understand is how the majority can possibly suggest an affirmative answer to this question. . . .

As far as is revealed by facts on which the Florida Supreme Court premised its decision, the officers did not advise respondent that he was free to break off this "interview." Inexplicably, the majority repeatedly stresses the trial court's implicit finding that the police officers advised respondent that he was free to refuse permission to search his travel bag. This aspect of the exchange between respondent and the police is completely irrelevant to the issue before

us. For as the State concedes, and as the majority purports to "accept," if respondent was unlawfully seized when the officers approached him and initiated questioning, the resulting search was likewise unlawful no matter how well advised respondent was of his right to refuse it. . . . Consequently, the issue is not whether a passenger in respondent's position would have felt free to deny consent to the search of his bag, but whether such a passenger—without being apprised of his rights—would have felt free to terminate the antecedent encounter with the police.

Unlike the majority, I have no doubt that the answer to this question is no. Apart from trying to accommodate the officers, respondent had only two options. First, he could have remained seated while obstinately refusing to respond to the officers' questioning. But in light of the intimidating show of authority that the officers made upon boarding the bus, respondent reasonably could have believed that such behavior would only arouse the officers' suspicions and intensify their interrogation. Indeed, officers who carry out bus sweeps like the one at issue here frequently admit that this is the effect of a passenger's refusal to cooperate. The majority's observation that a mere refusal to answer questions, "without more," does not give rise to a reasonable basis for seizing a passenger, is utterly beside the point, because a passenger unadvised of his rights and otherwise unversed in constitutional law has no reason to know that the police cannot hold his refusal to cooperate against him.

Second, respondent could have tried to escape the officers' presence by leaving the bus altogether. But because doing so would have required respondent to squeeze past the gun-wielding inquisitor who was blocking the aisle of the bus, this hardly seems like a course that respondent reasonably would have viewed as available to him. The majority lamely protests that nothing in the stipulated facts shows that the questioning officer "pointed gun at [respondent] or otherwise threatened him" with the weapon. Our decisions recognize the obvious point, however, that the choice of the police to "display" their weapons during an encounter exerts significant coercive pressure on the confronted citizen. We have never suggested that

the police must go so far as to put a citizen in immediate apprehension of being shot before a court can take account of the intimidating effect of being questioned by an officer with weapon in hand.

Even if respondent had perceived that the officers would let him leave the bus, moreover, he could not reasonably have been expected to resort to this means of evading their intrusive questioning. For so far as respondent knew, the bus' departure from the terminal was imminent. Unlike a person approached by the police on the street, see *Michigan v. Chesternut*, *supra*, or at a bus or airport terminal after reaching his destination, see *United States v. Mendenhall*, *supra*, a passenger approached by the police at an intermediate point in a long bus journey cannot simply leave the scene and repair to a safe haven to avoid unwanted probing by law-enforcement officials. The vulnerability that an intrastate or interstate traveler experiences when confronted by the police outside of his "own familiar territory" surely aggravates the coercive quality of such an encounter. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 247 (1973)....

Rather than requiring the police to justify the coercive tactics employed here, the majority blames respondent for his own sensation of constraint. The majority concedes that respondent "did not feel free to leave the bus" as a means of breaking off the interrogation by the Broward County officers. *Ante*, at 436. But this experience of confinement, the majority explains, "was the natural result of his decision to take the bus." *Ibid.* (emphasis added). Thus, in the majority's view, because respondent's "freedom of movement was restricted by a factor independent of police conduct—i.e., by his being a passenger on a bus," *ante*, at 436—respondent was not seized for purposes of the Fourth Amendment.

This reasoning borders on sophism and trivializes the values that underlie the Fourth Amendment. Obviously, a person's "voluntary decision" to place himself in a room with only one exit does not authorize the police to force an encounter upon him by placing themselves in front of the exit. It is no more acceptable for the police to force an encounter on a person by exploiting his "voluntary decision" to expose himself to perfectly legitimate personal or so-

cial constraints. By consciously deciding to single out persons who have undertaken interstate or intrastate travel, officers who conduct suspicionless, dragnet-style sweeps put passengers to the choice of cooperating or of exiting their buses and possibly being stranded in unfamiliar locations. It is exactly because this "choice" is no "choice" at all that police engage this technique.

In my view, the Fourth Amendment clearly condemns the suspicionless, dragnet-style sweep of intrastate or interstate buses. Withdrawing this particular weapon from the government's drug-war arsenal would hardly leave the police without any means of combatting the use of buses as instrumentalities of the drug trade. The police would remain free, for example, to approach passengers whom they have a reasonable, articulable basis to suspect of criminal wrongdoing. Alternatively, they could continue to confront passengers without suspicion so long as they took simple steps, like advising the passengers confronted of their right to decline to be questioned, to dispel the aura of coercion and intimidation that pervades such encounters. There is no reason to expect that such requirements would render the Nation's buses law-enforcement-free zones.

III

The majority attempts to gloss over the violence that today's decision does to the Fourth Amendment with empty admonitions. "If the [war on drugs] is to be fought," the majority intones, "those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime." The majority's actions, however, speak louder than its words.

I dissent.

Notes and Questions

1. The dissenting opinion refers to "dragnet" style searches and says that the basis of police conduct in these situations is "less likely to be *inarticulable* than *unspeakable*." What does this mean? Is this a reference to the racial profiling often involved in "street sweeps," as discussed by Jackie Campbell?