SUPREME COURT OF THE UNITED STATES

No. 98–9349

STEVEN DEWAYNE BOND, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 17, 2000]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question whether a law enforcement officer's physical manipulation of a bus passenger's carry-on luggage violated the Fourth Amendment's proscription against unreasonable searches. We hold that it did.

Petitioner Steven Dewayne Bond was a passenger on a Greyhound bus that left California bound for Little Rock, Arkansas. The bus stopped, as it was required to do, at the permanent Border Patrol checkpoint in Sierra Blanca, Texas. Border Patrol Agent Cesar Cantu boarded the bus to check the immigration status of its passengers. After reaching the back of the bus, having satisfied himself that the passengers were lawfully in the United States, Agent Cantu began walking toward the front. Along the way, he squeezed the soft luggage which passengers had placed in the overhead storage space above the seats.

Petitioner was seated four or five rows from the back of the bus. As Agent Cantu inspected the luggage in the compartment above petitioner's seat, he squeezed a green canvas bag and noticed that it contained a "brick-like"

object. Petitioner admitted that the bag was his and agreed to allow Agent Cantu to open it.[1] Upon opening the bag, Agent Cantu discovered a "brick" of methamphetamine. The brick had been wrapped in duct tape until it was oval-shaped and then rolled in a pair of pants.

Petitioner was indicted for conspiracy to possess, and possession with intent to distribute, methamphetamine in violation of 84 Stat. 1260, 21 U. S. C. §841(a)(1). He moved to suppress the drugs, arguing that Agent Cantu conducted an illegal search of his bag. Petitioner's motion was denied, and the District Court found him guilty on both counts and sentenced him to 57 months in prison. On appeal, he conceded that other passengers had access to his bag, but contended that Agent Cantu manipulated the bag in a way that other passengers would not. The Court of Appeals rejected this argument, stating that the fact that Agent Cantu's manipulation of petitioner's bag was calculated to detect contraband is irrelevant for Fourth Amendment purposes. 167 F. 3d 225, 227 (CA5 1999) (citing *California* v. *Ciraolo*, 476 U. S. 207 (1986)). Thus, the Court of Appeals affirmed the denial of the motion to suppress, holding that Agent Cantu's manipulation of the bag was not a search within the meaning of the Fourth Amendment. 167 F. 3d, at 227. We granted certiorari, 528 U. S. ___ (1999), and now reverse.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." A traveler's personal luggage is clearly an "effect" protected by the Amendment. See *United States* v. *Place*, 462 U. S. 696, 707 (1983). Indeed, it is undisputed here that petitioner possessed a privacy

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[1]The Government has not argued here that petitioner's consent to Agent Cantu's opening the bag is a basis for admitting the evidence.

interest in his bag.

But the Government asserts that by exposing his bag to the public, petitioner lost a reasonable expectation that his bag would not be physically manipulated. The Government relies on our decisions in *California* v. *Ciraolo*, *supra*, and *Florida* v. *Riley*, 488 U. S. 445 (1989), for the proposition that matters open to public observation are not protected by the Fourth Amendment. In *Ciraolo*, we held that police observation of a backyard from a plane flying at an altitude of 1,000 feet did not violate a reasonable expectation of privacy. Similarly, in *Riley*, we relied on *Ciraolo* to hold that police observation of a greenhouse in a home's curtilage from a helicopter passing at an altitude of 400 feet did not violate the Fourth Amendment. We reasoned that the property was "not necessarily protected from inspection that involves no physical invasion," and determined that because any member of the public could have lawfully observed the defendants' property by flying overhead, the defendants' expectation of privacy was "not reasonable and not one 'that society is prepared to honor.'" See *Riley*, *supra*, at 449 (explaining and relying on *Ciraolo*'s reasoning).

But *Ciraolo* and *Riley* are different from this case because they involved only visual, as opposed to tactile, observation. Physically invasive inspection is simply more intrusive than purely visual inspection. For example, in *Terry* v. *Ohio*, 392 U. S. 1, 17–18 (1968), we stated that a "careful [tactile] exploration of the outer surfaces of a person's clothing all over his or her body" is a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and is not to be undertaken lightly." Although Agent Cantu did not "frisk" petitioner's person, he did conduct a probing tactile examination of petitioner's carry-on luggage. Obviously, petitioner's bag was not part of his person. But travelers are particularly concerned about their carry-on

luggage; they generally use it to transport personal items that, for whatever reason, they prefer to keep close at hand.

Here, petitioner concedes that, by placing his bag in the overhead compartment, he could expect that it would be exposed to certain kinds of touching and handling. But petitioner argues that Agent Cantu's physical manipulation of his luggage "far exceeded the casual contact [petitioner] could have expected from other passengers." Brief for Petitioner 18–19. The Government counters that it did not.

Our Fourth Amendment analysis embraces two questions. First, we ask whether the individual, by his conduct, has exhibited an actual expectation of privacy; that is, whether he has shown that "he [sought] to preserve [something] as private." *Smith* v. *Maryland*, 442 U. S. 735, 740 (1979) (internal quotation marks omitted). Here, petitioner sought to preserve privacy by using an opaque bag and placing that bag directly above his seat. Second, we inquire whether the individual's expectation of privacy is "one that society is prepared to recognize as reasonable." *Ibid*. (internal quotation marks omitted).[2] When a bus passenger places a bag in an overhead bin, he expects that

[2]The parties properly agree that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment. Brief for Petitioner 14; Brief for United States 33–34; see *Whren* v. *United States*, 517 U. S. 806, 813 (1996) (stating that "we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers"); *California* v. *Ciraolo*, 476 U. S. 207, 212 (1986) (rejecting respondent's challenge to "the authority of government to observe his activity from any vantage point or place if the viewing is motivated by a law enforcement purpose, and not the result of a casual, accidental observation"). This principle applies to the agent's acts in this case as well; the issue is not his state of mind, but the objective effect of his actions.

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 petitioner's bag violated the Fourth Amendment.

The judgment of the Court of Appeals is

Reversed.