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Search and Seizure

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SEARCH AND SEIZURE

U.S. Const. amend. IV:

The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

N.Y. CONST. art. I, § 12:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

COURT OF APPEALS

Presentment Agency v. Muhammad F.
State v. Boswell[1]
(Decided November 30, 1999)

Muhammad F., a juvenile, and Keith Boswell, an adult, were both tried for drug related offenses in separate proceedings.[2] Their arrests were a result of random police stops of livery vehicles in which the respective defendants were passengers.[3] The question presented to the New York Court of Appeals was whether the suspicionless stops of livery vehicles by ununiformed New York City police officers on a roving patrol in unmarked cars, leading to the arrests of passengers, constitutes an unreasonable seizure in violation of the Fourth Amendment to the United States

[1] 94 N.Y.2d 136, 700 N.Y.S.2d 77 (1999).
[2] *Id.* at 140, 700 N.Y.S.2d at 78.
[3] *Id.*

Constitution.[4] The Court of Appeals held the stops violative of the Fourth Amendment.[5] In a dissenting opinion,[6] Justice Smith held the stops did not violate the Fourth Amendment to the Constitution,[7] nor did they violate Article I, Section Twelve of the New York Constitution.[8]

The facts leading to the arrests of Muhammad F. and Keith Boswell are quite similar. Due to a high incidence of robberies and violence against taxi drivers, the Livery-Taxi Task Force was created.[9] New York City police officers assigned to the Task Force targeted "certain neighborhoods"[10] at certain hours,[11] in order to conduct random stops of livery vehicles with passengers.[12] The purpose of the stops was to allow the police to give taxi drivers safety information and question the drivers as to their

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[4] U.S. CONST. amend. IV. 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, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

Both defendants also asserted violations of the New York State Constitution, however, the New York Constitution was not interpreted by the majority. *Muhammad F.*, 94 N.Y.2d at 140, 700 N.Y.S.2d at 78.

[5] *Id.*

[6] *Muhammad F.*, 94 N.Y.2d at 149, 700 N.Y.S.2d at 84 (Smith, J. dissenting).

[7] U.S. CONST. amend. IV.

[8] N.Y. CONST. art. I, §12. This section 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, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

[9] *Muhammad F.*, 94 N.Y.2d at 140, 700 N.Y.S.2d at 78. Trial testimony of the commander of the Street Crimes Unit showed that 3,600 robberies of taxi drivers had occurred in 1992. *Id.* at 151, 700 N.Y.S.2d at 85.

[10] *Muhammad F.*, 94 N.Y.2d at 140, 700 N.Y.S.2d at 78. The opinion does not disclose which neighborhoods the officers targeted. *Id.*

[11] *Id.* The patrols took place between the hours of 6 P.M. and 2 A.M. *Id.*

[12] *Id.*

present safety, while monitoring the passengers' behavior to determine if the taxi drivers were in possible present danger.[13]

In *Muhammad F.*, plainclothes police officers in an unmarked police car pulled over the cab in which Muhammad F. was riding, in order "to conduct safety checks."[14] One officer determined that Muhammad F. was "acting suspiciously,"[15] and ordered him and other passengers out of the car.[16] A search of the back seat revealed a "paper lunch-style bag containing crack cocaine."[17] Muhammad F. was placed under arrest.[18] The trial court denied a motion to suppress the evidence obtained as a result of the stop.[19] The Appellate Division reversed, however, holding that the evidence obtained was the product of an unconstitutional seizure.[20] Leave was granted to the presentment agency[21] to appeal the decision.[22]

Similarly, in *Boswell*, plainclothes officers in an unmarked police car pulled over the cab in which Boswell was riding.[23] The officers noticed Boswell attempting to "conceal a plastic bag,"[24]

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[13] *Id.*

[14] *Muhammad F.*, 94 N.Y.2d at 141, 700 N.Y.S.2d at 79.

[15] *Id.* The officer observed a passenger "lean forward and push something under the front seat of the vehicle." *Id.* at 149, 700 N.Y.S.2d at 84.

[16] *Muhammad F.*, 94 N.Y.2d at 141, 700 N.Y.S.2d at 79.

[17] *Id.*

[18] *Id.* The arrest occurred after Muhammad F. admitted the drugs belonged to him. *Id.* at 149, 700 N.Y.S.2d at 84.

[19] *Muhammad F.*, 94 N.Y.2d at 141, 700 N.Y.S.2d at 79.

[20] Muhammad F. v. Presentment Agency, 255 A.D.2d 168, 683 N.Y.S.2d 477 (1998). The Appellate Division found the procedures employed by the police to be "far too . . . discretion[ary]" to comply with Fourth Amendment jurisprudence. *Id.*

[21] New York's Family Court Act provides that "[o]nly a presentment agency may originate a juvenile delinquent proceeding." N.Y. FAM. CT. ACT § 310.1 (McKinney 1983). The presentment agency is generally a county attorney, corporation counsel, or district attorney. N.Y. FAM. CT. ACT § 310.1., Practice Commentary (McKinney 1983).

[22] *Muhammad F.*, 255 A.D.2d 168, 683 N.Y.S.2d 477.

[23] *Id.* at 142, 700 N.Y.S.2d at 79.

[24] *Id.* Boswell "kick[ed] a bag under the front seat of the vehicle." *Id.* at 150, 700 N.Y.S.2d at 85.

and ordered him out of the car.[25] The police found that the bag contained "packets of crack cocaine,"[26] and arrested Boswell as a result.[27] As in the case of Muhammad F., Boswell's attorney moved to have the evidence suppressed, but here, the motion was granted.[28] However, the Appellate Division reversed and granted leave for Boswell to appeal the decision.[29]

In determining whether the stops of the livery vehicles in these cases were constitutional, the New York Court of Appeals relied on *Brown v. Texas*,[30] a federal case which held that the reasonableness of suspicionless stops of automobiles on public highways[31] depends on "a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."[32] This balancing approach would require the court to weigh "'[1] the gravity of the public concerns served by the seizure, [2] the degree to which the seizure advances the public interest, and [3] the severity of the interference with individual liberty.'"[33] The Court emphasized the critical importance in seizure cases of an individual's reasonable expectation of privacy not being subjected to arbitrary invasions

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[25] *Id.* at 142, 700 N.Y.S.2d at 79.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] People v. Boswell, 255 A.D.2d 173, 683 N.Y.S.2d 471 (1998).

[30] 443 U.S. 47 (1979). Brown was stopped by police officers after the officers witnessed Brown walk away from another man in an alley. When officers asked Brown to identify himself, he refused and was subsequently arrested under a state law which made it a criminal act for a person to refuse to identify himself when an officer stopped him and requested the information. The question presented to the United States Supreme Court was whether Brown was lawfully seized by the police for Fourth Amendment purposes. *Id.* at 48-50.

[31] Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 450 (1977) (applying the *Brown* reasonableness test to situations where police conduct stops of motorists on public highways).

[32] *Brown*, 443 U.S. at 50 (citing United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)). *See infra* note 36 and accompanying text.

[33] *Muhammad F.*, 94 N.Y.2d at 142, 700 N.Y.S.2d at 79-80 (quoting *Brown*, 443 U.S. at 50-51).

"solely at the unfettered discretion of officers in the field,"[34] because *Brown* requires the seizures to be "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."[35] The Court looked at many cases where arbitrary police stops of motorists was challenged.

In *United States v. Brignoni-Ponce*,[36] the United States Supreme Court held that "officers must have a reasonable suspicion to justify roving-patrol stops,"[37] where the officer wants to question vehicle occupants.[38] Although there was a demanding public interest "to prevent the illegal entry of aliens at the Mexican Border,"[39] random stops of automobiles by Border Patrol officers on a roving patrol to review immigration statuses of automobile occupants, while "modest,"[40] was unconstitutional in light of the fact that the procedures employed were unreasonably "broad and unlimited,"[41] and provided for "potentially unlimited interference"[42] with residents' use of the highways "at the sole discretion of Border Patrol officers."[43]

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[34] *Muhammad F.*, 94 N.Y.2d at 142, 700 N.Y.S.2d at 80 (citing *Brown*, 443 U.S. at 51).

[35] *Brown*, 443 U.S. at 51. The Brown court did not define "explicit, neutral limitations," however, in subsequent cases, discussed *infra*, the Court looked at whether official police policies imposed explicit, neutral limitations on the conduct of the officers in regard to the seizures at issue.

[36] 442 U.S. 873 (1975). Border Patrol officers conducted a random stop of the car in which Brignoni-Ponce was a passenger in order to question its occupants as to their United States citizenship status. The officers' sole reason for stopping the car was that the occupants appeared to be of Mexican descent. The United States Supreme Court was asked to determine whether the stop constituted a seizure within the meaning of the Fourth Amendment. *Id.* at 875-76.

[37] *Id.* at 882.

[38] *Id.*

[39] *Id.* at 878. The Court referred to estimated figures compiled by the Immigration and Naturalization Service which showed that, at the time the case was decided, there were possibly "10 or 12 million aliens illegally in the country." *Id.*

[40] *Brignoni-Ponce*, 442 U.S. at 882.

[41] *Id.*

[42] *Id.*

[43] *Id.*

In United States v. *Martinez-Fuerte*,[44] however, the Supreme Court upheld suspicionless stops by Border Patrol officers. Here, unlike *Brignoni-Ponce*,[45] the Border Patrol officers were conducting the automobile stops at a fixed check point near the Mexican border, and provided many opportunities for motorists to see they would be required to stop.[46] The Court again spoke of the strong public interest in controlling the flow of illegal aliens into the United States from the Mexican border,[47] and determined that the "objective intrusion"[48] of stopping and visually inspecting the vehicle, and asking questions, outweighed the "subjective intrusion"[49] of the fear and concern generated by the stop in lawful travelers. The Court held that the subjective intrusion is "appreciably less in the case of a checkpoint stop,"[50] because motorists "can see that other vehicles are being stopped [and] can see visible signs of the officers' authority, [so that they are] much less likely to be frightened or annoyed by the intrusion."[51] In fact, fixed checkpoints, unlike patrol stops, "reassur[e] law-abiding motorists that the stops are duly authorized and believed to serve the public interest."[52] Also, officers did not choose where the

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[44] 428 U.S. 543 (1976). Respondents were arrested by Border Patrol officers at a highway checkpoint 66 miles from the Mexican border. The question presented was whether the checkpoint stops complied with the Fourth Amendment. *Id.* at 545.

[45] 442 U.S. 873.

[46] *Martinez-Fuerte*, 428 U.S. at 545-46. Within a one mile stretch, four large flashing signs warned motorists to stop ahead for U.S. Officers, traffic cones narrowed the traffic into two lanes where a Border Patrol officer could be seen in full uniform, Border Patrol vehicles with flashing lights kept motorists from using the closed lanes, a Border Patrol office building was located nearby, and floodlights were used for nighttime operations. *Id.*

[47] *Id.* at 556-57. The Court previously discussed the Immigration and Naturalization Service's estimation of the large number of illegal immigrants already in the United States, put forth in *Brignoni-Ponce*. *Id.* at 551. *See supra* note 39 and accompanying text.

[48] *Id.* at 558.

[49] *Id.*

[50] *Id.*

[51] *Martinez-Fuerte*, 428 U.S. at 558 (citing United States v. Ortiz, 422 U.S. 891, 894-95 (1975)).

[52] *Id.* at 559.

checkpoints would be; checkpoint locations were chosen by the responsible officials.[53] Hence, the Court determined that the fixed checkpoints provided "less room for abusive or harassing stops than there [is] in the case of roving-patrol stops,"[54] and likely advanced "Fourth Amendment interests by minimizing the intrusion on the general motoring public."[55]

Following *Martinez-Fuerte*, in *Delaware v. Prouse*,[56] the Supreme Court determined the validity of a suspicionless stop by a police officer of a randomly chosen vehicle in order to conduct a driver license and registration check. The Court weighed the state's "vital interest in . . . ensuring that licensing, registration, and vehicle inspection requirements are being observed,"[57] and whether the exercise of a random check "was a sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interests."[58] But the Court reiterated its position that, absent reasonable suspicion, seizures of this sort "must be undertaken pursuant to previously specified 'neutral criteria.'"[59] In *Prouse*, the Court determined that the private intrusion was unnecessary because the state's interest could be satisfied in a less intrusive manner.[60]

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[53] *Id.* The Court found it likely that enforcement officials, responsible for resource allocation decisions, were not likely to "locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class." *Id.*

[54] *Id.*

[55] *Id.* at 60.

[56] 440 U.S. 648 (1979). Highway Patrol officers conducted a random stop of Prouse's vehicle in order to check his driver license and car registration for the purpose of ensuring Prouse was driving legally. The officer smelled marijuana smoke and saw marijuana on the car floor. Prouse was subsequently arrested. The question presented was whether the random stop of vehicles to conduct driver license and registration checks constituted an unlawful seizure within the meaning of the Fourth Amendment. *Id.* at 650.

[57] *Id.* at 658. Although the state produced "no statistics," the Court recognized the extent of the need for highway safety and the danger to life highway travel poses. *Id.*

[58] *Id.* at 659.

[59] *Id.* at 662 (citing Marshall v. Barlow's Inc., 436 U.S. 307, 323 (1978)).

[60] *Id.* at 659-60. Specifically, the Court noted that officers could still use the "foremost method" of observing the violations and then stopping the motorist. *Id.*

However, in *Michigan Department of State Police v. Sitz*,[61] the Supreme Court held suspicionless stops of vehicles to conduct sobriety checks at checkpoints constitutional. The Court recognized that the state's interest in eradicating the drunken driving problem was indisputable,[62] and, as in *Martinez-Fuerte*, the officers were following proper guidelines and procedures governing checkpoint operations.[63] However, the Court carefully noted that the propriety of the police procedures questioned under the *Brown* balancing test should not be governed by the fact that public interests are advanced, because determination of "which . . . techniques should be employed to deal with a serious public danger"[64] should be left to "politically accountable officials."[65]

Using the above established U.S. Supreme Court precedent, Muhammad F. and Keith Boswell asserted that the absence of a fixed checkpoint invalidated the seizures in their respective cases.[66] The New York Court of Appeals rejected the argument:

> The Supreme Court has not adopted a per se rule banning all such stops and requiring a fixed checkpoint or roadblock in all cases. Suspicionless patrol stops are suspect as a general matter because of both their elevated potential intrusiveness and their greater opportunities for the unlimited exercise of discretion by police; no such stop has been upheld by the Supreme Court or our Court when it was conducted at random. Suspicionless stops,

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[61] 496 U.S. 444 (1990). Sitz, a motorist, brought suit challenging the constitutionality of the state's use of highway checkpoints to stop motorists and conduct sobriety checks. The question presented was whether the procedure employed by the state constituted an unlawful seizure within the meaning of the Fourth Amendment. *Id.* at 447-48.

[62] *Id.* at 451. The Court commented on statistical evidence showing that "[d]runk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage." *Id.*

[63] *Id.* at 453.

[64] *Id.*

[65] *Id.*

[66] *Muhammad F.*, 94 N.Y.2d at 145, 700 N.Y.S.2d at 82.

> however, of all oncoming traffic at roadblock-type stops to check driver license and registration are permissible.[67]

The Court looked to its own decision in *People v. John BB.*,[68] in which the Court upheld the constitutionality of uniform and nondiscriminatory patrol stops of vehicles after a series of burglaries was discovered.[69] Under the *Brown* reasonableness test, the Court held that the state's interest in acquiring information regarding the burglaries outweighed the "momentary [personal] inconvenience to motorists."[70] The Court found the procedures employed by the police were not arbitrary,[71] because "the roving patrol was limited to stopping vehicles located in the region in which there had been a large number of burglaries,"[72] and traditional alternatives would be ineffective in a "sparsely populated area."[73]

In applying *Brown* and *John BB.* to the instant case, the Court found the taxi stops to be "unreasonable and invalid."[74] Although the procedures employed by the police were clearly not arbitrary, given the strong governmental interest in "protecting victim-prone taxicab drivers late at night on urban streets from a crime wave of violent robberies and homicides by disseminating information to the drivers and preventing crimes that are in progress or

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[67] *Id.* at 145-46, 700 N.Y.S.2d at 82.

[68] 56 N.Y.2d 482, 438 N.E.2d 864, 453 N.Y.S.2d 158 (1982), *cert. denied*, 459 U.S. 1010 (1982). After a random vehicle stop, police seized a pellet gun and speakers from a rifle case inside the respondent's car. The question presented to the New York Court of Appeals was whether the patrol stops of vehicles comported with the Fourth Amendment. *Id.* at 485-86, 438 N.E.2d at 866, 453 N.Y.S.2d at 160.

[69] *Id.* at 482, 438 N.E.2d at 866, 453 N.Y.S.2d at 158.

[70] *Id.* at 486, 438 N.E.2d at 867, 453 N.Y.S.2d at 161.

[71] *Id.* The Court noted that arbitrariness of the state action is not controlling, but elimination of the element "has been identified time and again as a critical factor in determining the reasonableness of official investigative activity of an intrusive nature." *Id.*

[72] *Id.*

[73] *Id.* The Court compared the roving roadblocks in this situation to the Border Patrol checkpoints at issue in *Martinez-Fuerte*. *Id.*

[74] *Muhammad F.*, 94 N.Y.2d at 146, 700 N.Y.S.2d at 82.

imminent,"[75] decisions as to which techniques should have been employed were for New York City law enforcement officials to make, not for the individual police officers.[76] Also, no guidelines were written for officers to follow and, while the stops were carried out pursuant to general verbal instructions by superior officers, determining which cars to stop was discretionary with the patrol officers, who also were not required to keep a written record of their patrol activity.[77] In other words, the Task Force failed to take measures to "mitigate the constitutional infirmity of 'standardless and unconstrained discretion of the official in the field.'"[78]

In considering the objective intrusion of conducting safety checks and possibly searching the back seats of the taxis, and the subjective intrusion of the random stops, conducted at night, by non-uniformed officers in unmarked cars, taking motorists by surprise and possibly striking fear in law-abiding travelers, the Court determined that the subjective intrusion would have been diminished had the New York City Police Department employed a "uniform system for stopping cars."[79]

Finally, the prosecution failed to submit evidence that a roving patrol stop, such as the one at issue, as opposed to a fixed checkpoint stop conducted by uniformed officers, "was a reasonably effective means of furthering the State interest in reducing violent crimes against taxi drivers,"[80] nor did the prosecution show that there were no less intrusive means to

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[75] *Id.*

[76] *Id.*

[77] *Id.* at 148, 700 N.Y.S.2d at 83.

[78] *Muhammad F.*, 94 N.Y.2d at 147-48, 700 N.Y.S.2d at 83 (citing *Prouse*, 440 U.S. at 661). For example, the Court recognized that procedures could have been implemented whereby officers stopped one car in every two, three or four. *Id.* at 148, 700 N.Y.S.2d at 83.

[79] *Muhammad F.*, 94 N.Y.2d at 147, 700 N.Y.S.2d at 83 (citing People v. Scott, 63 N.Y.2d 518, 473 N.E.2d 1, 483 N.Y.S.2d 649 (1984)). A road block was established pursuant to a written directive from the County Sheriff, and officers were prohibited from administering sobriety tests unless they observed specific criteria listed in the written directive to be indicative of intoxication. *Scott* at 522, 473 N.E.2d at 1, 483 N.Y.S.2d at 650.

[80] *Muhammad F.* at 146-47, 700 N.Y.S.2d at 82-83.

prevent crime directed at taxi drivers.[81] Also, there was no showing that a "stationary checkpoint by uniformed officers in marked police cars was 'impractical.'"[82]

The Court found "a failure to either establish the reasonableness of the patrol stops [under the *Brown* balancing test], or to satisfy the constitutional requirement that the stops were 'carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of the individual officers.'"[83] Therefore, it affirmed the Appellate Division's reversal order in the case of Muhammad F. and reversed the Appellate Division's reversal order in the case of Keith Boswell.[84]

In a dissenting opinion, Judge Smith argued that a responsive policy to criminal activities against taxicab drivers can be "reasonable and consistent"[85] with federal and state constitutional requirements.[86] To pass constitutional muster, "a policy must be uniform and nondiscriminatory [and] the policy cannot be used as a pretext for harassing innocent citizens."[87] An unwritten policy in itself does not fall short of constitutionality.[88] Here, the dissent determined the policy to be reasonable and nonarbitrary, because the policy consisted of "fixed locations where the police have a uniform, nonarbitrary policy of stopping vehicles,"[89] and although the police were on a roving patrol, "a roving patrol, narrowly focused on a particular crime situation, has also been upheld:"[90]

> [t]he indefiniteness of the term unreasonable militates against the construction of a general rule

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[81] *Id.*

[82] *Id.* at 147, 700 N.Y.S.2d at 83 (citing *Martinez-Fuerte*, 428 U.S. at 557).

[83] *Id.* at 148, 700 N.Y.S.2d at 84 (citing *Brown*, 443 U.S. at 51, and John *BB.*, 56 N.Y.2d at 485, 438 N.E.2d at 864, 453 N.Y.S.2d at 158).

[84] *Muhammad F.*, 92 N.Y.2d at 149, 700 N.Y.S.2d at 84.

[85] *Id.* at 151, 700 N.Y.S.2d at 85 (Smith, J., dissenting).

[86] *Id.* U.S. CONST. amend. IV, N.Y. CONST. art. I, §12. *See supra* notes 4 and 8 and accompanying text.

[87] *Muhammad F.*, 94 N.Y.2d at 151, 700 N.Y.S.2d at 86 (Smith, J., dissenting).

[88] *Id.* at 151, 700 N.Y.S.2d at 85 (Smith, J., dissenting).

[89] *Id.*

[90] *Id.* Judge Smith noted that the police officers followed a procedure whereby the officers stopped every third taxi and inquired as to the safety of the driver. *Id.* at 151, 700 N.Y.S.2d at 86.

> of universal application for determining the validity of official intrusions of this nature. Rather, the facts of each case must be examined and the essential inquiry is whether the police conduct may be characterized as reasonable, which in turn requires a balancing of the State's interest in the inquiry at issue against the individual's interest in being free from governmental interference.[91]

The dissent found it important to note here that, in regard to the procedures undertaken by the police in this case and in *John BB.*,[92] neither *Martinez-Fuerte*[93] nor *Brignoni-Ponce*[94] posed a barrier.[95]

Finally, the dissent discussed the issue of standing. "In order to challenge the constitutionality of a search, the burden is on the person challenging the search to demonstrate a reasonable expectation of privacy."[96] Here, the dissent distinguished between the privacy interests of the driver and those of the taxi's passengers,[97] and determined that Muhammad F. and Keith Boswell could not show "they had a legitimate expectation of privacy in the passenger compartment of the taxicabs."[98] For example, Boswell denied that the bag found in the taxi (later discovered to have contained drugs) was his,[99] therefore, "he had no reasonable expectation in that bag and, thus, no standing to challenge its admission into evidence."[100]

The language in the Federal[101] and the New York State[102] Constitutions regarding searches and seizures is identical.

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[91] *Muhammad F.*, 94 N.Y.2d at 152, 700 N.Y.S.2d at 86 (citing *John BB.*, 56 N.Y.2d 482, 438 N.E.2d 864, 453 N.Y.S.2d 158) (Smith, J., dissenting).

[92] 56 N.Y.2d 482, 438 N.E.2d 864, 453 N.Y.S.2d 158 (Smith, J., dissenting).

[93] 428 U.S. 543.

[94] 422 U.S. 873.

[95] *Muhammad F.*, 94 N.Y.2d at 152, 700 N.Y.S.2d at 86 (Smith, J., dissenting).

[96] *Id.* at 153, 700 N.Y.S.2d at 87 (Smith, J., dissenting).

[97] *Id.* at 152, 700 N.Y.S.2d at 86 (Smith, J., dissenting).

[98] *Id.* at 153, 700 N.Y.S.2d at 87 (Smith, J., dissenting). The dissent cited many seizure cases affirming its position. *Id.*

[99] *Id.* Muhammad F.'s admission was not discussed here. *Id.*

[100] *Id.* The majority assumed standing. *Id.* at 148, 700 N.Y.S.2d at 84.

[101] U.S. CONST. amend. IV. *See supra* note 6 and accompanying text.

However, the search and seizure law in New York's Constitution[103] has been interpreted in such a way so as to grant greater individual protections.[104]

Carrie Foote

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[102] N.Y. CONST. art. 1, § 12. *See supra* note 8 and accompanying text.
[103] N.Y. CONST. art. 1, § 12.
[104] 31 NY JUR. 2d *Criminal Law* § 423 (1995).