

**[J-49-00]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 55 W.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered January 29, 1999, at No.
	:	1634PGH1997 affirming the Judgment of
v.	:	Sentence of the Court of Common Pleas
	:	of Allegheny County entered June 30,
	:	1997 at No. CC9604563.
PAULA DOWDS,	:	
	:	
Appellant	:	
	:	SUBMITTED: March 8, 2000
	:	

**DISSENTING OPINION**

**MR. JUSTICE NIGRO**

**DECIDED: NOVEMBER 22, 2000**

I respectfully dissent from the majority opinion since I believe that the interaction between Dowds and the officers at the airport constituted an unlawful seizure and that therefore, the evidence obtained as a result of the seizure should have been suppressed.

Here, as the majority notes, Dowds was approached by two officers who identified themselves and their purpose, asked to speak with her, requested her ticket, and inquired about her luggage. In support of its determination that this interaction between Dowds and the officers did not amount to a seizure, the majority relies upon the fact that the officers were in plain clothes and did not display any weapons, that they identified themselves and explained their duties at the airport, and that they “merely requested” ticket information from Dowds in a polite manner.

However, as I noted in Commonwealth v. Boswell, 554 Pa. 275, 721 A.2d 336 (1998)(Opinion in Support of Reversal), police officers inherently demonstrate their authority without having to display weapons or use commands or threats, especially in light of the fact that it is general knowledge that police officers carry weapons and have the power of arrest. Regardless of whether they speak in conversational tones or couch their demands in polite requests, the mere fact that they are police officers is in and of itself intimidating. From the moment the police approach a person and identify themselves, the average citizen is, in my view, seized because he or she does not feel free to ignore the police officers and go about their business.<sup>1</sup>

Based upon the officers' interaction with Dowds in the instant case, I cannot conclude that she was free to leave. Thus, any evidence obtained after Dowds was illegally seized, including any statements she made, her ticket stub, and her luggage and its contents, was tainted by the illegal seizure and should have been suppressed. See Commonwealth v. Stevenson, 560 Pa. 345, 744 A.2d 1261 (2000). I would therefore reverse the Superior Court's decision affirming the order denying Dowd's motion to suppress.

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<sup>1</sup> In Boswell, I set forth the following warning that should be given by the police when conducting a random stop of someone based upon a drug courier profile:

We are police officers investigating drug trafficking. We approached you on a purely random basis and would like to ask you some questions. You have a legal right to decline our requests, a right to refuse to cooperate, and you are free to leave. If you choose not to leave and to comply with our requests, anything revealed through those inquiries may be used against you in legal proceedings. Furthermore, if you agree to cooperate at the outset, you may still refuse at any time to cooperate further; you may end the inquiry and leave. Do you understand that you are under no obligation to comply with our requests at this time?

Boswell, 554 Pa. at 292 n.1, 721 A.2d at 334 n.1.

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Mr. Justice Zappala joins in the dissenting opinion.