

Criminal Procedure—Court of Appeals Independently Reviews Evidence While Claiming to Defer to District Court’s Factual Findings—*United States v. Smith*, 423 F.3d 25 (1st Cir. 2005), *cert. denied*, 126 S. Ct. 2287 (2006)

The United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”¹ A seizure of the person occurs when a law enforcement officer takes control of a person by physical force or show of authority, effectively restraining that person’s ability to move.² In *United States v. Smith*,³ the Court of Appeals for the First Circuit considered whether an encounter between two police officers and a man waiting for a bus constituted an unlawful seizure.⁴ In determining that an unlawful seizure did not occur, the court of appeals reviewed the district court’s factual findings using the “clearly erroneous” standard, while assessing its ultimate conclusions of law de novo.⁵

On September 16, 2002, two police officers in a marked cruiser approached Quinton Smith while he sat on a wall on Woolson Street in Dorchester, Massachusetts.⁶ Not recognizing Smith, the officers pulled up their cruiser next to him and, through the car window, asked if he lived in the house in front of which he sat.⁷ After Smith answered that he did not, one of the officers

1. U.S. CONST. amend. IV. Ratified by Congress in 1791 as part of the Bill of Rights, the Fourth Amendment reflects citizens’ desire for protection from governmental intrusion upon their privacy. *See infra* note 26 (discussing drafting and ratification of Bill of Rights and Fourth Amendment).

2. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968) (describing circumstances in which unlawful seizure occurs). Not every encounter between a law enforcement officer and a citizen equates to an unlawful seizure. *Id.*; *see also* *California v. Hodari D.*, 499 U.S. 621, 626 (1991) (holding one must submit to police authority for seizure to occur absent physical force); *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988) (observing what constitutes seizure depends on police conduct and setting of encounter); *INS v. Delgado*, 466 U.S. 210, 215 (1984) (noting consensual encounter between police and citizen, though not initially unlawful, can escalate into seizure). *See generally* Wayne R. LaFave, *Nine Key Decisions Expand Authority to Search and Seize*, 69 A.B.A.J. 1740 (1983) (explaining police do not seize every citizen who feels obliged to stop for inquiry).

3. 423 F.3d 25 (1st Cir. 2005), *cert. denied*, 126 S. Ct. 2287 (2006).

4. *Id.* at 27 (noting government’s assertion that consensual encounter occurred).

5. *Id.* at 31 n.4, 32 (indicating standard of review and reversing district court’s grant of Smith’s motion to suppress). The “clearly erroneous” standard applies when a court of appeals reviews the trial court’s factual findings. BLACK’S LAW DICTIONARY 269 (8th ed. 2004) (defining “clearly erroneous standard”). The court of appeals will uphold the trial court’s findings unless it concludes that the trial court has made a clear error. *Id.* Conversely, under the de novo review standard, the appellate court will defer to the trial court’s factual findings but will review “the evidence and law without deference to the trial court’s rulings.” *Id.* at 106 (defining “appeal de novo”); *see also* *United States v. Young*, 105 F.3d 1, 5 (1st Cir. 1997) (noting trial court’s constitutional decisions subject to “plenary review”).

6. *United States v. Smith*, 332 F. Supp. 2d 277, 279 (D. Mass. 2004), *rev’d*, 423 F.3d 25 (1st Cir. 2005) (setting forth findings of fact). The officers drove by Smith in their cruiser, then circled around the block and approached him on their second time around. 423 F.3d at 27.

7. 423 F.3d at 27 (illustrating officers’ suspicions of Smith).

asked him why he was sitting on the wall.⁸ Smith replied that he was waiting for the bus.⁹ When the officers pointed out that the closest bus stop was located on the corner across the street, Smith stated that he would be able catch the bus from where he sat.¹⁰ The officers reacted to this response by exiting their cruiser in order to have Smith fill out a Field Intelligence Observation Report (FIO).¹¹

When the officers approached Smith, they were armed and in uniform.¹² They placed themselves on both sides of the telephone pole situated directly in front of Smith.¹³ Upon the officers' request, Smith produced identification.¹⁴ One officer went back to the cruiser to verify Smith's name in a database, at which time Smith announced that the police had an outstanding warrant against him.¹⁵ The data check confirmed Smith's statement and after a brief struggle, the officers arrested Smith and searched his person.¹⁶ As a result of the search, the officers uncovered a loaded pistol, four rounds of ammunition, and three plastic bags of marijuana.¹⁷

The government charged Smith with one count of possession of a firearm and ammunition by a felon.¹⁸ Smith filed a motion to suppress the gun, arguing that the arresting officers seized the weapon in violation of the Fourth Amendment to the United States Constitution.¹⁹ In evaluating the motion to

8. *Id.*

9. *Id.*

10. *Id.* The district court found that one of the officers spoke in an aggressive tone, while Smith responded politely. *See* United States v. Smith, 332 F. Supp. 2d 277, 281 (D. Mass. 2004), *rev'd*, 423 F.3d 25 (1st Cir. 2005).

11. 423 F.3d at 27 (confirming officers' suspicions of Smith). Using their training and expertise, the officers felt that it did not make sense for Smith to wait for the bus where he sat. *See id.* Their suspicions were evident because the purpose of filling out an FIO is for officers to gather information "upon the observation of known criminals or persons suspected of having an unlawful design." United States v. Smith, 332 F. Supp. 2d 277, 281 n.10 (D. Mass. 2004) (internal quotation marks omitted) (reciting findings of fact), *rev'd*, 423 F.3d 25 (1st Cir. 2005). When filling out an FIO, officers will record the suspect's name, address, type of clothing worn, date of birth, social security number, and nickname. *Id.*

12. *See* 423 F.3d at 26-27 (observing though officers armed, they did not remove guns from holsters).

13. *Id.* (describing scene of alleged seizure). The district court found that the officers' placement prevented Smith from moving forward. United States v. Smith, 332 F. Supp. 2d 277, 281 (D. Mass. 2004), *rev'd*, 423 F.3d 25 (1st Cir. 2005). Furthermore, due to the rough terrain and fence behind Smith, the district court concluded that he did not have the option to retreat. *Id.* (concluding officers' dominating physical presence prevented Smith from willfully leaving). *Contra* 423 F.3d at 29-31 (rejecting district court's finding officers prevented Smith from leaving). In reviewing these facts, the court of appeals noted that the officers "stood in the only place they could" by standing on either side of the telephone pole. *Id.* at 30 (suggesting officers did not intend to prevent Smith from willfully leaving).

14. 423 F.3d at 27 (illustrating officers' intent of filling out FIO).

15. *Id.* The officer's verification revealed that Smith had an outstanding warrant against him for receiving stolen motor vehicle license plates. *Id.*

16. *Id.*

17. *Id.* (listing evidence Smith sought to suppress).

18. 423 F.3d at 26 (describing Smith's violation of federal statute).

19. *Id.*

suppress, the district court judge went to the scene of the incident.²⁰ The judge sat on the wall where Smith sat, watched for the bus, and noted that the bus stop was approximately 100 feet away.²¹ The judge also noted that it was drizzling on the day of the incident, and the spot where Smith sat provided some shelter from the rain.²²

After assessing the scene, the district court judge weighed the findings with the evidence presented at trial and concluded that the officers unreasonably seized Smith when they exited their cruiser.²³ Accordingly, the district court deemed the seizure unlawful.²⁴ The court of appeals reversed, however, concluding that a reasonable person in Smith's position would not have felt required to remain when the officers approached him and, therefore, no unlawful seizure occurred.²⁵

The Fourth Amendment to the United States Constitution guarantees protection from unreasonable seizures.²⁶ In 1968, in its *Terry v. Ohio*²⁷ decision, the United States Supreme Court stated that an unlawful seizure occurs when a law enforcement officer restrains a citizen's liberty without reasonable suspicion.²⁸ Subsequent to this decision, the Supreme Court has

20. *United States v. Smith*, 332 F. Supp. 2d 277, 279 (D. Mass. 2004), *rev'd*, 423 F.3d 25 (1st Cir. 2005). The court of appeals, on the other hand, relied on photographs of the scene to review the case. *See* 423 F.3d at 30 (examining photographs of scene to assist in deciding case).

21. *United States v. Smith*, 332 F. Supp. 2d 277, 280-81 (D. Mass. 2004) (characterizing observations from actual scene), *rev'd*, 423 F.3d 25 (1st Cir. 2005).

22. *United States v. Smith*, 332 F. Supp. 2d 277, 280 (D. Mass. 2004) (concluding it was reasonable for Smith to wait for bus where he sat), *rev'd*, 423 F.3d 25 (1st Cir. 2005). The district court judge found Smith's story credible and the officers' contrary assessments unreasonable. *Id.* at 281. The judge confirmed Smith's credibility immediately upon observing the scene and not after a long deliberation. *Id.* at 281 n.9.

23. *United States v. Smith*, 332 F. Supp. 2d 277, 282-86 (D. Mass. 2004) (granting Smith's motion to suppress), *rev'd*, 423 F.3d 25 (1st Cir. 2005).

24. *United States v. Smith*, 332 F. Supp. 2d 277, 286 (D. Mass. 2004) (announcing holding), *rev'd*, 423 F.3d 25 (1st Cir. 2005).

25. *See* 423 F.3d at 32 (reversing district court's grant of Smith's motion to suppress). The court of appeals reviewed the district court's conclusions of law de novo. *Id.* at 28.

26. U.S. CONST. amend. IV (protecting citizens from governmental intrusions); *cf.* 16A AM. JUR. 2D *Constitutional Law* § 343 (2006) (discussing conflict between police power and personal liberty rights). *See generally* 1 JOHN WESLEY HALL, *SEARCH AND SEIZURE* § 1.6, at 14 (3d ed. 2000) (discussing drafting and ratification of Fourth Amendment). The Framers disagreed about the final version of the Fourth Amendment; in fact, Congress voted on it by mistake. *See id.* at 14 (noting House of Representatives previously rejected final version). The states ratified this version of the amendment despite the mistake and therefore adopted it. *See id.* (noting House actually rejected final version). The states delayed ratification of the Constitution because of the absence of a bill of rights with Fourth Amendment principles. *See id.* The states would not have ratified the Constitution but for the Framers' promise that the government would draft a bill of rights. *See id.* *See generally* 16A AM. JUR. 2D *Constitutional Law* § 398 (2006) (describing adoption of Bill of Rights).

27. 392 U.S. 1 (1968).

28. *See Terry v. Ohio*, 392 U.S. 1, 20-22 (1968) (clarifying what constitutes reasonable seizure under Fourth Amendment). In *Terry*, a police officer stopped the defendant after the officer witnessed the defendant's unusual behavior, which the officer thought suggested criminal activity. *Id.* at 6-7. The officer searched Terry's person by patting down his outer clothing. *Id.* at 29. The officer did not, however, search underneath Terry's clothing until he felt a gun, which the officer then removed. *Id.* at 29-30. In upholding the denial of a motion to suppress the gun as evidence, the Supreme Court held that an officer who observes

recognized that not every encounter with a law enforcement officer is an unconstitutional intrusion on privacy.²⁹ In the absence of reasonable suspicion, a court will determine that an unlawful seizure occurred only if a reasonable person would have felt that he could not walk away from the encounter.³⁰

On appeal of a motion to suppress, most courts bifurcate their review, reviewing lower courts' factual findings for clear error, and reviewing conclusions of law de novo.³¹ Courts reason that de novo review of legal conclusions clarifies legal principles and establishes precedent so law enforcement officers can follow a defined set of rules.³² Alternatively, appellate review that considers only whether the lower court's findings of fact were "clearly erroneous" recognizes that it is the trial court's duty to determine facts.³³

unusual activity may use his experience to reasonably determine if a person intends criminal activity. *Id.* at 30. In doing so, the officer can make an investigative stop and conduct a limited search of the person's outer clothing. *Id.* (holding officers did not violate Terry's constitutional rights).

29. *See Florida v. Bostick*, 501 U.S. 429, 434 (1991) (noting mere questioning by officers does not presumptively amount to seizure); *see also United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (asserting that if every street encounter amounted to seizure, courts would severely restrict law enforcement practices). The government has the burden of proving that a person voluntarily consented to police requests. *See United States v. Mendenhall*, 446 U.S. 544, 557-58 (1980) (holding government presented sufficient evidence to support consent).

30. *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (defining and providing examples of circumstances indicating "seizure"). A person might not feel free to leave if several police officers are present, the officers display their weapons, the officers make physical contact with the person, or the officers use forceful tones and language. *Id.*

31. *See, e.g., Ornelas v. United States*, 517 U.S. 690, 699 (1996) (applying common standard of review rule to determine probable cause and reasonable suspicion); *United States v. Cardoza*, 129 F.3d 6, 13-14 (1st Cir. 1997) (applying common standard of review rule to determine whether unlawful seizure occurred); *United States v. Young*, 105 F.3d 1, 5 (1st Cir. 1997) (holding court of appeals reviews motions to suppress using dual standard). In *Young*, the court of appeals affirmed the district court's denial of a suppression motion by employing a "clearly erroneous" standard of review to the district court's factual findings, and de novo review to its conclusions of law. *United States v. Young*, 105 F.3d 1, 5 (1st Cir. 1997). In doing so, the court of appeals arrived at the same legal conclusion as the district court: the officers did not conduct an unlawful seizure. *See generally* 6 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, § 11.7(c), at 436-56 (4th ed. 2004) (analyzing standards of review in suppression motions).

32. *Ornelas v. United States*, 517 U.S. 690, 697 (1996) (stressing importance of appellate court's ability to control, maintain, and clarify legal principles); *see also United States v. Arvizu*, 534 U.S. 266, 275 (2002) (adhering to *Ornelas* and acknowledging importance of consistent legal principles within circuits); Brock M. Benjamin, Note, *United States v. Arvizu: "Fourth Amendment Misinterpretation 'Stopped' at the Border"*, 30 T. MARSHALL L. REV. 271, 279-80 (2004) (suggesting adherence to *Ornelas* standard will lead to "consistent body of case law"); *see also LAFAVE, supra* note 31, at 440-41 (discussing reasons for use of de novo appellate review).

33. *United States v. Young*, 105 F.3d 1, 5 (1st Cir. 1997) (recognizing importance of district court's unique opportunity to observe witness demeanor and determine witness credibility); *see also United States v. Arvizu*, 534 U.S. 266, 276 (2002) (observing importance of district court's access to evidence); *United States v. Cardoza*, 129 F.3d 6, 13-14 (1st Cir. 1997) (noting courts of review defer to lower courts' factual findings); *United States v. McCarthy*, 77 F.3d 522, 529 (1st Cir. 1996) (maintaining court of review will uphold lower court's suppression motion denial if reasonable evidentiary support exists); *United States v. Zapata*, 18 F.3d 971, 975 (1st Cir. 1994) (observing necessity of appellate court's deference to trial court); *cf.* 2 JOHN WESLEY HALL, SEARCH AND SEIZURE § 46.5, at 837 (3d ed. 2000) (discussing district court's general role as fact-finder);

In the 1996 decision *Ornelas v. United States*,³⁴ the United States Supreme Court applied the rule that appellate courts review findings of fact for clear error, and conclusions of law de novo, to the question of whether an officer had sufficient reasonable suspicion or probable cause to seize a suspect and search his person or vehicle.³⁵ Lower courts now rely on the *Ornelas* Court's reasoning to determine whether police searches and seizures are lawful.³⁶ Although appellate courts defer to district courts' factual findings regarding the circumstances that led to the alleged unlawful seizure, they review the ultimate legal conclusions de novo.³⁷

In *United States v. Smith*, the Court of Appeals for the First Circuit reversed the district court's decision granting Smith's motion to suppress.³⁸ The court of appeals applied the holding of *Ornelas* to review the motion.³⁹ Although *Ornelas* requires deference to the district court's factual findings, such deference does not shield the district court's legal conclusions from de novo review.⁴⁰ Determining that the district court tried to disguise legal conclusions in its factual findings, the court of appeals reversed and held that the incident

LAFAVE, *supra* note 31, at 438 (listing categories of factual findings trial typically made by courts); Michael Kaye, *Can a Court Hold That Some Facts Are Not Suspicious as a Matter of Law?*, 3 PREVIEW U.S. SUP. CT. CAS. 160 (2001) (discussing standard of review and making predictions about Court's decision in *Arvizu*). In his article predicting how the Supreme Court would decide *Arvizu*, Michael Kaye suggested that the Court may use the decision as an opportunity to caution lower courts to adhere to the *Ornelas* rule that appellate courts should give due weight to findings of fact and inferences drawn by trial courts. Kaye, *supra* (noting courts should give due weight to law enforcement officers' inferences); see also HALL, *supra*, at 837 (discussing district court's general role as fact-finder); LAFAVE, *supra* note 31, at 438 (listing factual findings typically made by trial courts).

34. 517 U.S. 690 (1996).

35. *Ornelas v. United States*, 517 U.S. 690, 696-99 (1996) (holding appellate court should review legal conclusion de novo and facts for clear error). An appellate court determines whether the facts established by the district court satisfy the relevant legal standard. *Id.* at 696-97 (noting Supreme Court never expressly deferred to trial courts' legal conclusions); see also *Overview of the Fourth Amendment*, 91 GEO. L. J. 5, 13-14 (2003) (noting *Ornelas* requires two-part test to determine whether probable cause exists).

36. See *United States v. Williams*, 413 F.3d 347, 351 (3d Cir. 2005) (applying *Ornelas* rule to seizure determinations in Third Circuit); see also *United States v. Avery*, 137 F.3d 343, 348 (6th Cir. 1998) (applying *Ornelas* rule in Sixth Circuit); *United States v. Cardoza*, 129 F.3d 6, 14 (1st Cir. 1997) (applying *Ornelas* rule in First Circuit); *United States v. Hernandez*, 93 F.3d 1493, 1498 (10th Cir. 1996) (applying *Ornelas* rule in Tenth Circuit).

37. *United States v. Cardoza*, 129 F.3d 6, 14-16 (1st Cir. 1997) (applying *Ornelas* rule to affirm district court's holding). In *Cardoza*, a police officer questioned Cardoza on the street from his cruiser. *Id.* at 9. During the conversation, the officer noticed that Cardoza held ammunition in his hand. *Id.* Two different officers then pat-frisked Cardoza and his sixteen-year-old companion, who carried a handgun and ammunition that Cardoza helped him obtain. *Id.* at 8-9. Cardoza appealed the district court's denial of his motion to suppress, arguing that the police had no reasonable suspicion to question him and that as a result, they obtained the gun and ammunition during an unlawful seizure. *Id.* at 13. Reviewing the facts for clear error and the conclusions of law de novo, the court of appeals concluded that the officers did not seize Cardoza before they saw the bullet in his hand. *Id.* at 13-16 (upholding denial of motion to suppress).

38. 423 F.3d at 31 (concluding officers did not conduct unlawful seizure).

39. *Id.* at 31.

40. See *id.* at 31 n.4 (claiming de novo review allowed court to reach different result than district court).

between Smith and the officers did not amount to an unlawful seizure.⁴¹

In determining whether an unlawful seizure occurred, the *Smith* court misused the *Ornelas* standard of review that lower courts rely upon for suppression motions.⁴² Although the court correctly applied de novo review to the district court's ultimate legal conclusion, it overlooked the rule's second requirement, which obliges the court of appeals to review factual findings only for clear error.⁴³ Giving deference to the district court's factual findings is important in suppression motions, as in all trials and motions, because the trial judge views the evidence firsthand and is therefore in the best position to determine its importance.⁴⁴

Not only did the *Smith* court neglect to defer to the district court's factual findings, it also put those findings aside to reach its own factual conclusions.⁴⁵ This put the court of appeals in a position to determine the entire outcome of the case by itself.⁴⁶ By reaching legal conclusions based on facts that it

41. See *id.* at 31 & n.4, 32 (suggesting some of district court's factual findings are actually legal conclusions). The court specifically pointed out that the district court's finding that Smith was "surrounded" and unable to leave was a legal conclusion and therefore a constitutional determination. *Id.* at 31 n.4 (rejecting district court's finding and stating constitutional determinations subject to de novo review). In reversing, the court concluded that it was not objectively reasonable for Smith to think he could not terminate the encounter. See *id.* at 31 (noting Smith's failure to terminate encounter with police did not mean he felt restrained).

42. See 423 F.3d at 32, 37-39 (Lynch, J., dissenting) (criticizing majority for misapplying standard of review). The dissent argued that in following the *Ornelas* rule, the appellate court should have deferred to the district court's factual findings. *Id.* at 37-39 (suggesting court of appeals did not respect district court's factual findings).

43. See *id.* at 37-38 (implying court reviewed factual findings under de novo standard rather than clear error standard). The dissent also pointed out that because the government never challenged the district court's factual findings, it waived the issue and the court of appeals should have accepted the district court's findings as true. *Id.* at 37 (suggesting court of appeals had no reason to consider issue).

44. United States v. Young, 105 F.3d 1, 5 (1st Cir. 1997) (stressing importance of district court viewing facts in first instance and assessing witness demeanor); see also 423 F.3d at 36-37 (Lynch, J., dissenting) (noting court of appeals should give district court's factual findings due weight because fact-specific). The *Smith* dissent also discussed the weight due to law enforcement officers' inferences and judgments. *Id.* at 38 (noting *Ornelas* requires courts to give weight to officers' perceptions); see also Brock, *supra* note 32, at 279 (suggesting courts should not discount officers' experience and training). Just as trial court judges are in the best position to judge facts by viewing evidence at trial, police officers are in the best position to analyze the facts of the encounter based on their background and experience. See *Ornelas v. United States*, 517 U.S. 690, 699 (1996) (suggesting officers' knowledge and experience constitute relevant background facts). "[B]ackground facts provide a context for the historical facts, and when seen together yield inferences that deserve deference." *Id.* at 699.

45. 423 F.3d at 37-38 (Lynch, J., dissenting) (pointing out facts appellate court determined contrary to district court's findings). The court of appeals stated that when the officers approached Smith, they "stood in the only place they could." *Id.* at 30. The district court did not find this. See *supra* note 13 and accompanying text (comparing facts found by district court and court of appeals). Instead, the district court found that the officers closed in on Smith as the conversation continued. See *id.* Additionally, the court of appeals relied on photographs of the scene to reach its conclusions while the district court judge actually went to the scene to make her findings. See *supra* note 20 and accompanying text (comparing fact-finding of district and appellate courts).

46. See 423 F.3d at 37-38 (Lynch, J., dissenting) (detailing appellate court's findings of fact and conclusions of law). The court of appeals determined facts in this case and it also reviewed the district court's legal conclusions de novo. See *id.* at 37 (discussing de novo review and noting specific facts found by court of

determined, rather than those found by the district court, the court of appeals essentially took on the trial court's role in the judicial process.⁴⁷

Adhering to *Smith's* reasoning would put the fairness of the judicial process in jeopardy because the court of appeals could find facts without hearing the evidence firsthand, and without the opportunity to determine witness credibility.⁴⁸ Unless the court of appeals performs its own full-scale independent review and evaluation of the evidence, which the *Smith* court did not, it would base its conclusions on incomplete evidence.⁴⁹ Reaching conclusions based on incomplete evidence makes the adjudication process unfair to one or both of the parties involved.⁵⁰ This is especially dangerous in a case where, as here, the ultimate decision affects a person's liberty.⁵¹

By misusing the rule in *Ornelas*, the First Circuit court granted a new power to appellate courts to decide facts in appeals of motions to suppress. This is a departure from precedent, including *Ornelas*, where the rule established a "clearly erroneous" standard of review of the district court's factual findings. The *Smith* court's misapplication of *Ornelas* not only alters normal appellate standards of review, but it also adds an element of unfairness to appeals of motions to suppress because the appellate judge does not view all of the evidence firsthand. If followed, *Smith* will have an adverse effect on the parties involved in a suppression motion because the case suggests that a court of appeals will reach its own factual conclusions by conducting an independent,

appeals). By taking on both roles, the court of appeals determined the entire outcome of the case with little support from the district court. *See id.* (concluding appellate court decided different facts than trial court thus determining all aspects of case).

47. *See id.* at 37 (noting appellate courts do not make factual findings). It is a well-known legal principle that it is the trial court's duty to decide facts. *See supra* note 33 and accompanying text (discussing importance of trial court's role as fact-finder).

48. *See* United States v. Zapata, 18 F.3d 971, 975 (1st Cir. 1994) (highlighting respect appellate courts give trial courts because trial courts view facts firsthand). By noting the importance of the trial judge's access to firsthand evidence, the *Zapata* court implied that a deferential standard encourages fairness in the judicial process. *See id.* (commenting on deference owed to trial judge's factual findings); *see also* United States v. Young, 105 F.3d 1, 5 (1st Cir. 1997) (stating district court in best position to judge facts and implying most fair to parties).

49. *See* 423 F.3d at 37-38 (Lynch, J., dissenting) (inferring court drew conclusions based on incomplete evidence because it relied on photographs of scene).

50. *See id.* (suggesting court's decision-making process unfair). The *Smith* dissent implied that an injustice occurred because the court of appeals reached its conclusions by viewing photographs taken of the scene rather than relying on the facts found by the district court judge, who personally visited the scene. *Id.* (implying district court judge's perceptions at scene more reliable than photographs court of appeals viewed); *see supra* note 48 and accompanying text (discussing importance of adherence to trial court's findings based on firsthand evidence).

51. *See* INS v. Delgado, 466 U.S. 210, 226 (1984) (Brennan, J., concurring in part and dissenting in part) (observing challenge in balancing personal and societal security). There is an ongoing debate over where to draw the line between the importance of the Fourth Amendment's guarantee of freedom and the extent to which law enforcement officers can act to protect society. *Id.* (noting tension has led to difficulties in determining how to balance both interests). *See generally* 16A AM. JUR. 2D *Constitutional Law* § 343 (2006) (discussing how far police power may extend to restrain personal liberty rights in interest of common welfare).

and inherently incomplete, review of the evidence presented by the parties in the district court.

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