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Supreme Court of New York Appellate Division, Third Department - People v. Ruppert

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SUPREME COURT OF NEW YORK APPELLATE DIVISION, THIRD DEPARTMENT

People v. Ruppert[1]
(decided July 26, 2007)

Shawn Ruppert was convicted of criminal possession of drugs and drug paraphernalia.[2] He filed a motion to suppress certain evidence discovered in his possession, arguing that the search and seizure of the controlled substances was carried out illegally.[3] Both the United States Constitution and the New York State Constitution protect against illegal searches and seizures.[4] The defendant's motion was denied and he pleaded guilty to "criminal possession of a controlled substance" and criminal use of drug paraphernalia.[5]

Ruppert appealed his conviction, arguing that confiscation of controlled substances by private guards amounted to state action.[6] Ruppert also argued that a subsequent search, carried out by a New York State Trooper, uncovering additional evidence violated both the Fourth Amendment of the Federal Constitution and section twelve of the New York State Constitution.[7] The Appellate Division, Third Department, disagreed, holding evidence obtained pursuant to a war-

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[1] 839 N.Y.S.2d 866 (App. Div. 3d Dep't 2007).
[2] *Ruppert*, 839 N.Y.S.2d at 867.
[3] *Id.* at 867-68.
[4] U.S. CONST. amend. IV; N.Y. CONST. art. I, § 12.
[5] *Ruppert*, 839 N.Y.S.2d at 867.
[6] *Id.*
[7] *See id.* at 868.

rantless search by a private citizen does not amount to state action.[8] Furthermore, a police officer, after making a lawful arrest, may carry out a warrantless search.[9]

Ruppert was at a music festival on the day he was arrested. The festival organizers employed private security guards to monitor the grounds.[10] During the festival, two private security guards searched Ruppert's backpack, uncovering various glass vials containing controlled substances. Subsequently, the security guards escorted Ruppert off of the festival grounds and turned him over to an on-duty New York State Trooper. The trooper conducted another search of Ruppert's person and his backpack. This subsequent search uncovered additional contraband. Following a hearing, the county court determined the seized evidence was admissible; Ruppert pleaded guilty, and subsequently appealed to the Appellate Division, Third Department, which affirmed.[11]

The function of the security guards who conducted the initial search of Ruppert and his possessions was central to the court's holding.[12] If the guards were acting as agents of the government, their search would have violated both the Federal Constitution and the New York State Constitution. However, the *Ruppert* court determined that the security guards were acting as private citizens.[13] It is well settled that warrantless searches conducted by private citizens,

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[8] *Id.* at 867.
[9] *Id.* at 868.
[10] *Ruppert*, 839 N.Y.S.2d at 867.
[11] *Id.* at 867, 868.
[12] *Id.* at 867.
[13] *Id.*

detached from government influence, are constitutional.[14] The *Ruppert* court relied on New York precedent articulating circumstances that may indicate government involvement, and found "no indicia of state action."[15] Furthermore, the court noted the security guards did not become state agents by virtue of simply handing over the seized controlled substances to the New York State Trooper.[16] Therefore, the search and seizure conducted by the security guards did not violate Ruppert's constitutional rights.[17]

The *Ruppert* court also determined the subsequent search of Ruppert's person and his backpack, conducted by the state trooper, was performed lawfully. Because there was probable cause for Ruppert's arrest, it was within the trooper's authority to carry out a warrantless search.[18]

Although the *Ruppert* court relied almost entirely on state law, there is precedent from the United States Supreme Court that supports the *Ruppert* holding. In *Burdeau v. McDowell*,[19] the Supreme Court analyzed the application of the Fourth Amendment to

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[14] *Id. See also* People v. Jones, 393 N.E.2d 443, 445 (N.Y 1979) (stating the Fourth Amendment is not applicable to the acts of private citizens).

[15] *Ruppert*, 839 N.Y.S.2d at 867. The following factors have been used by the courts to determine indicia of governmental involvement: (1) "a clear connection between the police and the private investigation" People v. Ray, 480 N.E.2d 1065, 1067 (N.Y. 1985) (citing People v. Horman, 239 N.E.2d 625, 628 (N.Y. 1968)); (2) "completion of the private act at the instigation of the police," *Ray*, 480 N.E.2d at 1067 (citing People v. Esposito, 332 N.E.2d 863, 866 (N.Y. 1975)); (3) and a "private act undertaken on behalf of the police to further a police objective" *Ray*, 480 N.E.2d at 1067 (citing People v. Adler, 409 N.E.2d 888, 891 (N.Y. 1980)).

[16] *Ruppert*, 839 N.Y.S.2d at 867 (stating an airline employee did not become a state agent the moment he handed over contraband to the police (citing *Adler*, 409 N.E.2d at 891)).

[17] *Id.* at 868.

[18] *Id.*

[19] 256 U.S. 465 (1921).

searches and seizures conducted by private citizens.[20] In *Burdueau*, J.C. McDowell was charged with mail fraud.[21] The prosecution intended to rely upon McDowell's personal documents indicating his fraudulent activity. However, these documents were stolen from the private workspace of McDowell and subsequently turned over to the special assistant to Attorney General Joseph A. Burdeau.[22]

McDowell argued the documents were seized in violation of the Fourth Amendment, contending the individuals who stole the documents from him were working under Burdeau's direction.[23] Nonetheless, the Court found the documents were seized by the order of McDowell's former employer, not the Department of Justice.[24] Rather, the Court emphasized that the federal government was in no way involved with the seizure of McDowell's documents.[25]

The *Burdeau* Court reiterated that the protections of the Fourth Amendment are only enforceable against governmental action.[26] Therefore, the Court held McDowell's constitutional rights were not violated because the federal government took no part in seizing his documents. Instead, the Court framed the wrongful search and seizure as acts of private citizens.[27]

The issue of warrantless searches and seizures conducted by

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[20] *Burdeau*, 256 U.S. at 471.
[21] *Id.* at 470.
[22] *Id.*
[23] *Id.* at 470, 471.
[24] *Id.* 473.
[25] *Burdeau*, 256 U.S. at 476.
[26] *Id.* at 475.
[27] *Id.* at 476.

private citizens has received significant treatment in New York.[28] In the wake of *Burdeau*, the New York Court of Appeals encountered a similar issue in *Sackler v. Sackler.*[29] In *Sackler*, a husband received a divorce judgment against his wife for her act of adultery.[30] However, evidence of the wife's acts were obtained illegally by her husband and individuals employed by him.[31] The Court of Appeals confronted the issue of whether such evidence should have been admissible under the Fourth Amendment of the United States Constitution.[32] The court, relying on the Supreme Court's holding in *Burdeau*, ruled the Fourth Amendment is not applicable to nongovernmental intrusions.[33] Thus, the court held evidence obtained pursuant to search by a private citizen, is admissible in a civil action.[34] The *Sackler* court did not inquire into the admissibility of such evidence in a criminal trial or evidence obtained by governmental authorities to be used in civil litigation.[35]

However, five years later in *People v. Horman*,[36] the Court of Appeals revisited its holding in *Sackler* in the context of a criminal prosecution.[37] Horman was apprehended outside of a department store by two security guards employed by the store. Subsequently, Horman was escorted to an area where he was later frisked and was

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[28] *See Ray*, 480 N.E.2d at 1067; *Adler*, 409 N.E.2d at 891; *Jones*, 393 N.E.2d at 445; *Esposito*, 332 N.E.2d at 866; *Horman*, 239 N.E.2d at 628.

[29] 203 N.E.2d 481 (N.Y. 1964).

[30] *Sackler*, 203 N.E.2d at 482.

[31] *Id.*

[32] *Id.* at 482, 483.

[33] *Id.* at 483.

[34] *Id.* at 484.

[35] *Sackler*, 203 N.E.2d at 484.

[36] 239 N.E.2d 625 (N.Y. 1968).

[37] *Horman*, 239 N.E.2d at 626.

found to have a gun in his possession. Horman filed a motion to suppress the gun, which was denied.[38] Subsequently, he pleaded guilty to criminal possession of a firearm and was sentenced to a six-month term in prison.[39] Horman appealed, arguing the search and seizure conducted by the security guards violated his constitutional rights.[40]

The New York Court of Appeals affirmed.[41] Citing *Sackler* and *Bardeau*, the court held the protections embodied in the Fourth Amendment have not been applied to the actions of private individuals.[42] Furthermore, the Fourth Amendment, by virtue of the Fourteenth Amendment, is only enforceable against state actors.[43] As there was no government participation in the seizure of Horman's gun, the seizure was constitutional.[44]

The rule that the Fourth Amendment is inapplicable to a search and a seizure conducted by private citizens is not absolute. Instances exist where the act of a private individual is tantamount to government action. The following cases provide guidance to New York courts when the line between private action and government ac-

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[38] *Id.*

[39] *Id.*

[40] *Id.* Horman argued that the search conducted by the security officers was a violation of his Fourth Amendment protections embodied in the United States Constitution.

[41] *Id.* at 628.

[42] *Horman*, 239 N.E.2d at 627.

[43] For a discussion of the applicability of the Federal Constitution's criminal procedure protections to non-state actors and, particularly, private security guards, see David A. Skansky, *The Private Police*, 46 UCLA L. REV. 1165 (1999).

> Criminal procedure law . . . has almost nothing to say about the activities of private security guards. That law consists chiefly of the Fourth, Fifth, and Sixth Amendments, made applicable to the states through the Due Process Clause of the Fourteenth Amendment. . . . [It is] deemed applicable only to government action, not to private conduct.

Id. at 1183.

[44] *Horman*, 239 N.E.2d at 628.

tion may be blurred.

In *People v. Jones*,[45] a case relied upon by the *Ruppert* court, Dave Jones was apprehended by two department store security guards and later confessed to stealing leather coats.[46] Based upon these facts and relying upon the reasoning set forth in *Bardeau*, *Sackler*, and *Horman*, the confession would be admissible because the security guards were private actors. Instead, the Court of Appeals upheld the trial court's suppression of the confession.[47] *Jones* differs from the previous cases in this discussion because of the level of police involvement.

Prior to apprehending Jones, the store security guards requested the assistance of two police officers.[48] One of the police officers "placed his hand on [Jones's] shoulder, showed . . . his badge, identified himself as a police officer and told [Jones] . . . [to] keep his hands on the wall."[49] Subsequently, Jones was escorted to a security office by the store security guards and later questioned by store personnel.[50] Jones then signed a written confession and photographs depicting the items he had stolen.[51] Jones contended that the actions by the security guards and the police officers violated his Fourth Amendment protections.[52] The prosecution argued the police officers did not procure Jones's confession or his signature on photographs

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[45] 393 N.E.2d 443 (N.Y. 1979).
[46] *Jones*, 393 N.E.2d at 444-45.
[47] *Id.* at 446.
[48] *Id.* at 444.
[49] *Id.*
[50] *Id.*
[51] *Jones*, 393 N.E.2d at 444-45.
[52] *Id.* at 445.

depicting the items he stole.[53]

However, the Court of Appeals did not agree. Instead, the Court of Appeals took the position that the police officers were active participants in the arrest, and held the evidence should be suppressed because of the active governmental involvement.[54] The court reasoned that the government cannot use private individuals to circumvent constitutional limitations, nor can an act be labeled private if there are government actors involved.[55]

In addition to the Fourth Amendment, the *Jones* court also discussed the implications private action may have upon an individual's Fifth Amendment[56] right against self-incrimination.[57] The New York State Constitution provides similar protections as well.[58] In *Miranda v. United States*[59] the United States Supreme Court held police officers are required to inform individuals of their rights prior to custodial police questioning.[60] The *Jones* court stated the *Miranda* rule is intended to regulate the activity of law enforcement personnel.[61] Similarly, if private activity becomes significantly intertwined with

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[53] *Id.* at 446.

[54] *Id.*

[55] *Id.* at 445 (citing Lustig v. United States, 338 U.S. 74, 80 (1949); *Esposito*, 332 N.E.2d at 863). In *Lustig*, the Court held that federal investigators cannot circumvent the protections of Fourth Amendment if state investigators have breached an individual's Fourth Amendment protections.

[56] U.S. CONST. amend. V states, in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

[57] *Jones*, 393 N.E.2d at 445.

[58] N.Y. CONST. art. I, § 6, states, in pertinent part: "In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him or her."

[59] 384 U.S. 436 (1966).

[60] *Miranda*, 384 U.S. at 444.

[61] *Jones*, 393 N.E.2d at 446.

state action, the Fifth Amendment is enforceable against the actions of private individuals.[62] Therefore, the police involvement in *Jones* created exactly the type of environment *Miranda* was designed to protect against, even though security personnel from the store procured the confession.[63]

The *Ruppert* court also relied on *People v. Adler*,[64] in support of the proposition that the security guards at the music festival did not become state agents by virtue of simply handing over the controlled substances they discovered to the state trooper.[65] In *Adler*, police officers arrested Joyce Adler at New York's John F. Kennedy Airport after she picked up a package that was delivered to her.[66] Adler was charged with multiple counts of criminal possession of a controlled substance and possession of marijuana.[67] The events leading to Adler's arrest are quite detailed and begin with a package that was dropped off at Los Angeles International Airport. A suspicious airline employee examined the package and discovered that it contained various narcotics.[68] The employee informed the authorities who then took the necessary procedures to arrest Adler upon her arrival at Kennedy Airport.[69] In addition, a second warrantless search of the package and Adler took place in New York after the authorities were

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[62] *See id.*
[63] *Id.*
[64] 409 N.E.2d 888 (1980).
[65] *Ruppert*, 839 N.Y.S.2d at 867.
[66] *Adler*, 409 N.E.2d at 889.
[67] *Id.*
[68] *Id.* at 889-90.
[69] *Id.* at 890.

aware of the contents of the package.[70]

The Court of Appeals upheld the constitutionality of both searches on the grounds that they were initiated at the behest of a private individual.[71] First, the court determined a private individual discovered the controlled substances; the airline employee was not acting under the influence of state authority or law enforcement officials.[72] Secondly, as was the case in *Ruppert*, the airline employee did not become a state agent the moment he handed over the controlled substances to the police officers. The court also plainly stated that the police did not violate a privacy interest that was not already violated. Therefore, the search and seizure was constitutional.[73]

Lastly, the case of *People v. Wilhelm*[74] sheds further light on instances when a private action amounts to state action. In *Wilhelm*, a mother was convicted of murder and attempted murder when she drowned one of her children and tried to drown her other child.[75] After drowning her son, Wilhelm called emergency services and admitted to the drowning. An officer was dispatched to Wilhelm's home and upon his arrival he Mirandized Wilhelm who once again admitted to drowning her son.[76]

Subsequently, employees of Child Protective Services inter-

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[70] *Id.*
[71] *Adler*, 409 N.E.2d at 891.
[72] *Id.*
[73] *Id.*
[74] 822 N.Y.S.2d 786 (App. Div. 3d Dep't 2006).
[75] *Wilhelm*, 822 N.Y.S.2d at 788.
[76] *Id.*

viewed Wilhelm.[77] During these interviews, Wilhelm described the circumstances around the drowning of her child and once again admitted that she drowned her son. Wilhelm was convicted of murder in the second degree and attempted murder in the second degree, and was sentenced to a term of fifty years to life.[78] Wilhelm appealed her conviction arguing that her statements to the Child Protective Services employees violated Criminal Procedure Law section 710.30.[79]

A statement made by an accused to a public servant can be subject to suppression if the public servant was " 'engaged in law enforcement activity.' "[80] Relying on the principles annunciated in *People v. Jones*,[81] the *Wilhelm* court looked to the nature of the caseworkers purpose for interviewing Wilhelm.[82] The court found the caseworkers were a part of a team comprised of law enforcement agencies. The purpose of the caseworkers and the other members of this group of individuals "was to enhance the prosecutorial process."[83] Therefore, the court held the caseworkers were acting as government agents.[84] As a result, the Court of Appeals overturned Wilhelm's conviction and ordered a new trial.[85]

It is difficult to argue that the United States Supreme Court and the Court of Appeals of the State of New York have adhered to

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[77] *Id.* at 789.

[78] *Id.*

[79] N.Y CRIM. PROC. LAW § 710.30(1)(a)-(b) (McKinney 2007) (requiring the prosecution to provide notice if the state intends to enter into evidence a statement of the accused made to a public servant).

[80] *Wilhelm*, 822 N.Y.S.2d at 790.

[81] *Id.* at 791 (citing N.Y. CRIM. PROC. LAW § 60.45(2)(b)(ii) (McKinney 2007)).

[82] *Wilhelm*, 822 N.Y.S.2d at 791-92.

[83] *Id.* at 792.

[84] *Id.*

[85] *Id.* at 798.

an erroneous principle. For more than two centuries, courts have held the Fourth Amendment is not applicable to private action.[86] Protecting individuals from unlawful intrusions by the state is an essential aspect of individual liberty. Furthermore, the common law provides citizens with civil causes of action protecting against private intrusions.[87] The *Burdeau* case is an excellent example where the United States Supreme Court did not punish theft but rather allowed the Department of Justice to benefit from the fruits of an otherwise illegal activity.[88] Justice Brandeis, dissenting in *Burdeau*, criticized the Court for allowing the government to use documents known to be stolen.[89]

On the other hand, the majority of cases increase societal well-being as a whole because often private individuals are carrying out a pseudo-public service.[90] Yet, should private individuals suffer when truly criminal activity leads to their conviction? It has been argued that the courts should adopt the exclusionary rule annunciated in *Mapp v. Ohio*[91] when faced with the issue of unlawful searches and

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[86] *See* Boyd v. United States, 116 U.S. 616 (1886). The Court in *Boyd* partakes in a detailed discussion of the origins of the Fourth Amendment and its out growth from Seventeenth Century English law.

[87] Lisa Jane McGuire, Comment, *Banking on Biometrics: Your Bank's New High-Tech Method of Identification May Mean Giving Up Your Privacy*, 33 AKRON L. REV. 441, 469 (2000). The following causes of action lie in tort for the invasion of privacy: appropriation, unreasonable intrusion upon the plaintiff's seclusion or solitude, public disclosure of private facts, and false light in the public eye. *Id.* In New York only a cause of action for appropriation is actionable. *See* Howell v. New York Post Co., Inc., 612 N.E.2d 699, 703 (N.Y. 1993). This distinction may seem anomalous, but it is consistent with New York's protection of private actors.

[88] *Burdeau*, 256 U.S. at 476.

[89] *Id.* at 476 (Brandeis, J., dissenting).

[90] *See Ray*, 480 N.E.2d at 1065; *Adler*, 409 N.E.2d at 888; *Jones*, 393 N.E.2d at 443; *Esposito*, 332 N.E.2d at 863; *Horman*, 239 N.E.2d at 625; *Ruppert*, 839 N.Y.S.2d at 866.

[91] 367 U.S. 643 (1961).

seizures conducted by private individuals.[92] In *Mapp*, the Supreme Court adopted the exclusionary rule and held that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."[93]

Judge Bergen put forth an argument in his dissenting opinion in *Sackler* that the Court of Appeals should apply the exclusionary rule across the board.[94] He argued for suppression because the court would have suppressed evidence seized by police, if, instead of Sackler's husband, the police had broken into Sackler's home and seized evidence.[95] Judge Bergen found support in *People v. Defore*[96] and the holding's implications on private and public actors.[97] He posited that, by allowing private citizens to circumvent the requirements of the Fourth Amendment, the courts are helping individuals in their private suits, because the state cannot circumvent the Fourth Amendment to further the public good.[98] In Judge Bergen's view there is an inconsistency in our laws as they stand.[99]

While Judge Bergen put forth strong arguments in his dissent-

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[92] *Sackler*, 203 N.E.2d at 484 (Van Voorhis, J., dissenting).

[93] *Mapp*, 367 U.S. at 655.

[94] *Sackler*, 203 N.E.2d at 485 (Bergen, J., dissenting).

[95] *Id.*

[96] 150 N.E. 585, 588 (N.Y. 1926) (holding the New York State Constitution does not distinguish between public or private invasions privacy). In his opinion, Judge Cardozo clearly stated:

> [A]ll alike, whenever search is unreasonable, must answer to the law. For the high intruder and the low, the consequences become the same. Evidence is not excluded because the private litigant who offers it has gathered it by lawless force. By the same token, the state, when prosecuting an offender against the peace and order of society, incurs no heavier liability.

[97] *Sackler*, 203 N.E.2d at 485 (Bergen, J., dissenting).

[98] *Id.*

[99] *Id.*

ing opinion in *Sackler*, the current position of the court is best suited to protect individual rights. First, the exclusionary rule prevents state law enforcement agencies from undermining the privacy rights of individuals in the prosecutorial process. Second, by consistently holding that the Fourth Amendment is not applicable to private individuals, there is a bright line rule limiting state intrusion into an individual's daily life.[100]

The *Ruppert* court applied sound constitutional principles to protect individual rights. Tremendous guidance is provided to the lower courts when dealing with issues of Fourth Amendment application to private actions of citizens. The legal principals employed ensure that the courts will only enforce the proscriptions of the Fourth Amendment against a private citizen when there is state action.

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[100] *See Ray*, 480 N.E.2d at 1065; *Adler*, 409 N.E.2d at 888; *Jones*, 393 N.E.2d at 443; *Esposito*, 332 N.E.2d at 863; *Horman*, 239 N.E.2d at 625; *Ruppert*, 839 N.Y.S.2d at 866.

DOUBLE JEOPARDY

United States Constitution Amendment V:

[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . .

New York Constitution article I, section 6:

No person shall be subject to be twice put in jeopardy for the same offense . . . .