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# Appellate Division, Fourth Department, People v. Hall

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# SUPREME COURT OF NEW YORK
# APPELLATE DIVISION, FOURTH DEPARTMENT

People v. Hall[1]
(decided December 22, 2006)

Jon Hall was charged with illegally possessing weapons and a controlled substance after the police discovered two handguns and a small amount of cocaine in his vehicle and on his person during the course of a traffic stop.[2] The People argued that the warrantless search of the defendant's vehicle was the product of voluntary consent that Hall provided.[3] The defendant disputed this contention, claiming that the search was performed in the absence of voluntarily obtained consent—a violation of his right to be free from unreasonable searches and seizures as protected by the state and federal constitutions.[4] The trial court granted Hall's motion to suppress all tangible evidence and subsequent statements, and the People appealed.[5] The appellate division affirmed the decision of the county court.[6]

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[1] No. 1435 KA 06-01884, 2006 N.Y. App. Div. LEXIS 15595, at *1 (App. Div. 4th Dep't Dec. 22, 2006).

[2] *Id.*, at **1-2.

[3] *Id.*, at *2.

[4] People v. Hall, 2006 N.Y Misc. LEXIS 1158, at *1 (Erie County Ct. May 5, 2006); *see* U.S. CONST. amend. IV (stating in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."); *see also* N.Y. CONST. art. I, § 12 (stating in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . .").

[5] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *5; *Hall*, 2006 N.Y. App. Div. LEXIS 15595, at *1.

[6] *Hall*, 2006 N.Y. App. Div. LEXIS 15595, at *1.

On July 1, 2005, at approximately 5:00 a.m., an individual flagged down Buffalo Police Officer Melinda Zak ("Officer Zak") and asserted that the man in front of them was carrying a weapon.[7] Officer Zak observed the defendant close the trunk of the vehicle he was operating and then drive off.[8] After initiating a pursuit of the defendant's vehicle, Officer Zak requested backup assistance—three backup officers in two patrol cars responded less than a minute later.[9] The three patrol cars stopped the defendant's vehicle.[10] Buffalo Police Officer James Kaska ("Officer Kaska") approached the driver's side of the car and asked Hall to turn off the car's ignition.[11] He then asked Hall if he had " 'anything in the car we need to know about,' " and more specifically, " 'any guns, knives, grenades or bombs.' "[12] Hall responded to this question by stating that there was not, and reiterated this upon further questioning.[13]

Officer Kaska obtained the car keys from Hall and tossed them to Police Officer Brendan Kiefer ("Officer Kiefer"), who was standing to the rear of Hall's car.[14] Officer Kiefer opened the trunk and discovered a handgun.[15] At this point, the police removed Hall from the car, arrested him, and searched the car's interior—which

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[7] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at **1-2.
[8] *Id.*, at *2.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *2.
[13] *Id.* The court noted that no inquiry was made as to Hall's identity, the car's ownership, his destination, or from where he was coming. *Id.*, at **3-4.
[14] *Id.*, at *2.
[15] *Id.*

uncovered a second handgun beneath the front seat.[16] Officer Greg O'Shei arrived at the scene after the police handcuffed Hall and proceeded to read him *Miranda* warnings.[17] Hall indicated that he understood his rights and admitted that the gun found in the trunk was stolen and another gun, about which he had previously forgotten, could be found under the car's front seat.[18] A subsequent search of his person revealed a small quantity of cocaine, for which he was also criminally charged.[19]

The defendant moved pursuant to section 710.60(1) of the New York Criminal Procedure Law[20] to have the evidence against him suppressed as provided for in section 710.20(1),[21] asserting that

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[16] *Id.*

[17] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *2.

[18] *Id.*

[19] *Hall*, 2006 N.Y. App. Div. LEXIS 15595, at *2. The court pointed out that only one minute and six seconds elapsed between the radio transmissions, indicating that the vehicle had been stopped and that the defendant had been taken into custody. *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *2.

[20] N.Y. CRIM. PROC. LAW § 710.60(1) (McKinney 2006) states:

> A motion to suppress evidence made before trial must be in writing and upon reasonable notice to the people and with opportunity to be heard. The motion papers must state the ground or grounds of the motion and must contain sworn allegations of fact, whether of the defendant or of another person or persons, supporting such grounds. Such allegations may be based upon personal knowledge of the deponent or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The people may file with the court, and in such case must serve a copy thereof upon the defendant or his counsel, an answer denying or admitting any or all of the allegations of the moving papers.

[21] N.Y. CRIM. PROC. LAW § 710.20(1) provides in pertinent part:

> Upon motion of a defendant who . . . is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him in a criminal action . . . a court may . . . order that such evidence be suppressed or excluded upon the ground that it . . . [c]onsists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant.

there was insufficient probable cause to justify a warrantless search of the vehicle.[22] Specifically, he argued that the forcible stop of his vehicle was not justified and that he never consented to the subsequent search.[23] The People countered that the citizen informant's reliable information coupled with Officer Zak's observations were adequate to create a reasonable suspicion of criminal activity, thus justifying the traffic stop.[24] The government contended that the defendant consented to the search and his statements were permissibly obtained because he voluntarily waived his right to remain silent after receiving *Miranda* warnings.[25]

A suppression hearing was held in April 2006, where testimony was given by the officers who were present at the time of Hall's arrest.[26] The central issue at the suppression hearing was whether Hall voluntarily consented to the search.[27] Officer Kaska testified that he requested Hall's keys in order to obtain what he purported to be consent.[28] Yet, Officer Kaska could not remember his exact words and testified that his words were, "[O]k if we check."[29] However, the defense confronted him with a transcript of his testimony at a preliminary hearing held on July 11, 2005, where

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[22] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *1.

[23] *Id.*

[24] *Id.* To support the assertion that the information was reliable, the People pointed out that Officer Zak was familiar with the person who provided the information about the defendant as "a resident of the area and she was easily able to confirm his identification." *Id.*, at *3.

[25] *Id.*, at *1. *See* Miranda v. Arizona, 384 U.S. 436 (1966).

[26] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *1.

[27] *Id.*, at *5.

[28] *Id.*, at *2.

[29] *Id.*

he testified "that he [had] asked, '[W]ould you mind handing me the keys[?]' "[30] The court granted Hall's motion to suppress evidence, holding that the totality of the circumstances did not demonstrate that consent to search the vehicle was given voluntarily.[31]

The trial court's evidentiary ruling was affirmed on appeal.[32] The appellate division explained that the People had the burden of establishing that the defendant voluntarily consented to the search of his vehicle, and that the search did not exceed the scope of the consent.[33] The court held that the People failed to establish the substance of the exchange between the officer and the suspect, and therefore the court could not determine what an objectively reasonable person would have believed the conversation to have meant.[34] The court concluded that when crediting either version of the People's proffered testimony, permission to look or check the vehicle did not equate to permission to search the vehicle, and the search therefore violated the Fourth Amendment.[35]

In *Wong Sun v. United States*,[36] the petitioners appealed their convictions for violating Federal Narcotics Laws.[37] They objected to

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[30] *Id.*

[31] *Hall*, 2006 N.Y. Misc. LEXIS 1158, at *5 ("[T]he people have failed to establish that the defendant's consent to the search was voluntary and the unequivocal product of an essentially free and unconstrained choice." (citing People v. Driscoll, 449 N.Y.S.2d 809 (App. Div. 4th Dep't 1982))).

[32] *Id.*, at *1.

[33] *Id.*, at *2.

[34] *Id.*, at **2-3.

[35] *Id.*, at *3.

[36] 371 U.S. 471 (1963).

[37] *Id.* at 472-73. A man named Hom Way was arrested by federal narcotics agents for heroin possession and stated that a man he knew only as "Blackie Toy" was his source for the drugs. *Id.* at 473. The agents ultimately approached the home and business of James Wah Toy, and arrested him when he ran inside from them after they appeared uninvited at

several pieces of the government's proffered evidence, including oral statements made by defendant James Wah Toy ("Toy") at the time of his arrest, and heroin surrendered by defendant Johnny Yee ("Yee").[38] The petitioners theorized that these pieces of evidence "were inadmissible as 'fruits' of unlawful arrests or attendant searches."[39] The district court overruled the objections, admitted the evidence, convicted the petitioners in a non-jury trial, and the United States Court of Appeals for the Ninth Circuit affirmed.[40]

The United States Supreme Court granted certiorari to determine whether the challenged evidence should have been excluded.[41] The Court noted that Toy's challenged statements were made while he was handcuffed, and immediately after at least six federal agents had broken down the door to his home and chased after him into a bedroom where his family slept.[42] The Court held that "[u]nder such circumstances it is unreasonable to infer that Toy's response was sufficiently an act of free will to purge the primary taint of the unlawful invasion."[43] With regard to the challenged evidence

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the door. *Id.* at 473-74. Toy denied selling narcotics, but made statements that a man named Johnny Yee was engaged in such a practice and provided information as to where he could be found. *Id.* at 474-75.

[38] *Id.* at 477.

[39] *Id.*

[40] *Id.* at 472, 477, 478. The Ninth Circuit rejected contentions that the challenged pieces of evidence were "fruits" of illegal arrests, but held that that the petitioners' arrests were, in fact, illegal. *Id.* at 478 (citing Wong Sun v. United States, 288 F.2d 366, 369, 370 (9th Cir. 1961)). The court held that the agents lacked probable cause to make an arrest as required by the Fourth Amendment because the only information they were acting on was the uncorroborated statement of an informant whose reliability had not been previously tested, and the petitioners flight from the agents at his front door was not an act that could be used to corroborate the allegations of illegal conduct that brought the agents to the house. *Id.* at 480-84.

[41] *Wong Sun*, 371 U.S. at 473, *cert. granted*, 368 U.S. 817 (1961).

[42] *Wong Sun*, 371 U.S. at 486.

[43] *Id.*

that was subsequently discovered, the Court explained, "[w]e need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police."[44] The question to ask is whether the evidence was attained by exploitation of the established initial illegality or by "means sufficiently distinguishable to be purged of the primary taint."[45]

Applying these principles, the Court held that Toy's involuntary statements were inadmissible "fruits" of the poisonous tree.[46] Furthermore, the drugs which were recovered from Yee were inadmissible because he surrendered heroin during an encounter that would not have occurred but for Toy's illegal arrest.[47] The petitioners' convictions were reversed and the case was remanded.[48] The Court's opinion does not categorically eliminate the use of evidence that would not have been attained but for an illegal arrest, but instead prevents the use of evidence that is gleaned through the exploitation of that illegality by the police.

In *Florida v. Jimeno*,[49] the United States Supreme Court articulated an objective standard to determine whether the actions of police in conducting a consensual search of a vehicle are reasonable

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[44] *Id.* at 487-88.

[45] *Id.* (quotation omitted).

[46] *Wong Sun*, 371 U.S. at 487 ("[W]e find no substantial reason to omit Toy's declarations from the protection of the exclusionary rule.").

[47] *Id.* at 488. The Court's opinion stated that the narcotics surrendered by Yee resulted from police exploitation of the illegal arrest of Toy. *Id.*

[48] *Id.* at 493.

[49] 500 U.S. 248 (1991).

in scope under the Fourth Amendment.[50] The defendant in *Jimeno* was stopped for a traffic infraction and the police officer informed him that he believed there were narcotics in the car.[51] The officer explained that he did not have to consent to a search of the car, but the defendant granted the officer permission to search because he had nothing to hide.[52] Upon opening the passenger side door, the officer viewed a folded brown paper bag on the floorboard, picked it up, and found a kilogram of cocaine when he looked inside of it.[53] The Florida state courts suppressed the evidence, reasoning that the defendant's consent to search the car did not include permission to search closed containers within the vehicle.[54] The Supreme Court reversed, holding that "[t]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"[55] According to the Court, "[t]he scope of a search is generally defined by its expressed object."[56] In this case, the police informed the defendant that they believed he was in possession of narcotics, and would be searching for narcotics in the car.[57] Hence, the defendant could reasonably conclude based on this exchange that the search would entail looking through the car and inside containers that may

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[50] *Id.* at 249.
[51] *Id.*
[52] *Id.* at 249-50.
[53] *Id.* at 250.
[54] *Jimeno*, 500 U.S. at 250.
[55] *Id.* at 251 (citations omitted).
[56] *Id.* (citing United States v. Ross, 456 U.S. 798 (1982)).
[57] *Id.*

contain narcotics.[58]

In *People v. Whitehurst*,[59] a detective approached the defendant with whom he was familiar from a previous narcotics arrest and the defendant stated, " '[O]h no. Not you again.' "[60] The detective said yes and then asked what the defendant had for him.[61] The defendant placed two glassine envelopes in front of the detective and stated said that was all he had.[62] At a suppression hearing, the defendant sought to stipulate that the issue was one of consent, with the burden of proof on the People.[63] The court, however, determined that consent was not involved since the defendant voluntarily produced the narcotics.[64] The New York Court of Appeals reversed, holding that constitutional standards govern the decision of this factual issue, and it is the People that bear the burden of proof.[65] In its opinion, the court explained that "[i]nitially, the defendant carries the burden of proof when he challenges the legality of a search and seizure, but the People have the burden of going forward to show the legality of the police conduct in the first instance."[66] The court went on to state that "[w]hen a search and seizure is based upon consent, however, the burden of proof rests heavily upon the People to

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[58] *Id.*

[59] 254 N.E.2d 905 (N.Y. 1969).

[60] *Id.*

[61] *Id.*

[62] *Id.* at 905-06. The detective specifically asked, " '[w]hat have you got this time?' " *Id.* He acknowledged at the suppression hearing that this question was in reference to narcotics. *Id.*

[63] *Id.* at 906.

[64] *Whitehurst*, 254 N.E.2d at 906.

[65] *Id*

[66] *Id.* (citing People v. Malinky, 209 N.E.2d 694, 698 n.2 (N.Y. 1965)).

establish the voluntariness of that waiver of a constitutional right."[67] Thus, the *Whitehurst* court required the People to establish that the alleged voluntary conduct actually occurred.

In *People v. Gonzalez*,[68] the New York Court of Appeals explained that valid consent given to police by a citizen to perform a warrantless search is "a relinquishment of constitutional protection under both the federal and state constitutions against unjustified official intrusion."[69] The defendants were a married teenage couple.[70] The husband was arrested outside of the apartment after negotiating a drug transaction with a Drug Enforcement Administration Agent in the couple's apartment.[71] Nine agents then began to pound on the apartment door for five minutes, and when the wife finally opened the door, she too was handcuffed.[72] The agents told the wife's parents to leave the apartment, the couple was separated, consent to search the apartment was sought from each defendant in the presence of at least three agents, and both had their handcuffs removed only momentarily to sign consent cards for the search.[73] The court affirmed the appellate division's holding that suppression was

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[67] *Id.* The court supports this contention by citing the United States Supreme Court which stated in *Bumper v. North Carolina*: "When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given." 391 U.S. 543, 548 (1968).

[68] 347 N.E.2d 575 (N.Y. 1976).

[69] *Id.* at 577.

[70] *Id.*

[71] *Id.* at 577-78.

[72] *Id.* at 578.

[73] *Gonzalez*, 347 N.E.2d at 578, 579.

necessary because the consent given was involuntary.[74] The court explained that "[c]onsent to search . . . must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent."[75]

In *People v. Parris*,[76] the police made a warrantless arrest of the defendant on a burglary charge after a neighbor of the burglarized home provided a police officer with a detailed description of the perpetrator.[77] The defendant was found in possession of stolen property and the neighbor identified him at the scene.[78] The defendant moved to suppress evidence adduced from the warrantless arrest claiming the police lacked probable cause to arrest him.[79] At the suppression hearing, the People produced the officer to whom the neighbor had conveyed the description, and the court denied the motion to suppress.[80] The appellate division affirmed the trial court's ruling.[81] The New York Court of Appeals disagreed, finding that the police did not have probable cause to make a warrantless arrest of the defendant because the People failed to set forth a basis for the informing neighbors' knowledge of the defendant's description.[82] The People argued in the alternative that the police still had

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[74] *Id.* at 577.
[75] *Id.*
[76] 632 N.E.2d 870 (N.Y. 1994).
[77] *Id.* at 871.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Parris*, 632 N.E.2d at 871 (citing People v. Parris, 593 N.Y.S.2d 865 (App. Div. 2d Dep't 1993)).
[82] *Id.* at 875.

"reasonable suspicion to stop defendant on the street on the basis of [the neighbor's] description of his appearance, which then escalated to probable cause when defendant fled and abandoned his gun."[83] After concluding that the police lacked probable cause to make the warrantless arrest, the court remanded the case with instructions to grant the suppression order, holding that the People were precluded from advancing their alternative theory since they had not asserted it in the suppression court.[84]

In *People v. Gomez*,[85] the defendant was stopped by the police for a traffic infraction, and upon inspecting the car's undercarriage, one of the police officers noticed a fresh undercoat of paint near the gas tank.[86] The officer asked the defendant whether he had " '[g]uns, knives, cocaine, heroin, [or] marijuana' " in the car.[87] He denied possessing any of the specified contraband, and the officer requested consent to search the car, which the defendant gave.[88] The officer found gray "non-factory" carpet covering the area above where he had seen the fresh undercoating.[89] He pulled the carpet up, twisted open the sheet metal floorboard with a knife, and then used a crowbar to pry open part of the gas tank where a large amount of cocaine was

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[83] *Id.*

[84] *Id.*

[85] 838 N.E.2d 1271 (N.Y. 2005).

[86] *Id.* The stop was initiated because the defendant had illegally tinted windows. Additionally, the defendant's vehicle registration had been altered. *Id.* The word "Company" had been removed from the name on the registration card so that it read "Anna Teodora Fermin" rather than "Anna Teodora Fermin Company." *Id.*

[87] *Id.*

[88] *Id.* at 1272.

[89] *Id.*

discovered.[90] The defendant was arrested and indicted on felony drug charges.[91] His motion to suppress the evidence was denied, the appellate division affirmed, and the New York Court of Appeals was presented with the issue of whether the police had exceeded the scope of the consent given to search the car.[92] Applying the standard of reasonableness set forth in *Jimeno*, the court declared that the scope of the search was to be measured by what a reasonable person would have understood the exchange between the officer and the defendant to mean.[93] "Once a search exceeds the objectively reasonable scope of a voluntary consent, a more specific request or grant of permission is needed, in the absence of probable cause, in order to justify damage to the searched area or item sufficient to require its repair."[94] In this case, the denial of suppression was reversed because the scope of the search exceeded that to which voluntarily consent was given.[95]

New York's application of the constitutional prohibition of unreasonable searches and seizures is identical in form to the Fourth Amendment's application in the federal system: a logical result of the identical language in the respective constitutional provisions. Both systems use a standard of objective reasonableness to assess whether a challenged search or seizure was, in fact, reasonable. Also,

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[90] *Gomez*, 838 N.E.2d at 1272.

[91] *Id.*

[92] *Id.* at 1272-73. The Supreme Court found that consent to search the car had been voluntarily given, the appellate division affirmed this, and this court held that the record supported such a finding. *Id.* at 1273 n.1; *see also* People v. Gomez, 782 N.Y.S.2d 744 (App. Div. 1st Dep't 2004).

[93] *Id.* at 1273; *see Jimeno*, 500 U.S. at 251.

[94] *Gomez*, 838 N.E.2d at 1274.

[95] *Id.*

both limit the scope of a consensual search to that of its expressed object, and require unfettered voluntariness to be shown by the government. The state legislature's acceptance of the holdings of both the state and federal judiciary with regard to search and seizure jurisprudence is evident in its statutes. The New York Criminal Procedure Law sets forth efficient mechanisms to challenge evidence asserted to violate the substantive state or federal constitutional prohibitions on unreasonable searches and seizures. Hence, a challenge to a search or seizure that is argued to have been voluntarily consented to will be governed by the same substantive principles whether challenged under the federal or state constitution.

The primary difference is the procedure for challenging admissibility of evidence attained under these circumstances because of the differing procedural laws of the state and federal codes. New York courts, unlike the federal courts, offers its citizens an additional layer of protection with regard to the point at which asserted voluntariness will be recognized by the court. On top of the objective standard of reasonableness, New York acknowledges that the tactics police use to attain consent may diminish the degree to which that consent is truly voluntary, and requires suppression when the consent is a product of official coercion.

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