Touro Law Review

Volume 20
Number 1 *New York Constitutional Decisions: 2003 Compilation*

Article 14

December 2014

Court of Appeals of New York, People v. Johnson

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Cover Page Footnote

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COURT OF APPEALS OF NEW YORK

People v. Johnson[1]
(decided Dec. 22, 2003)

James Johnson was indicted for criminal possession of a weapon after a loaded handgun was found in the glove compartment of a rented vehicle he was driving.[2] The hearing court granted Johnson's motion to suppress the gun, finding that it was discovered by an illegal search,[3] which would violate the Fourth Amendment of the United States Constitution[4] and Article I, Section 12 of the New York State Constitution.[5] The appellate division reversed the hearing court finding that the police recovered Johnson's loaded handgun pursuant to a valid inventory search of his vehicle.[6] The New York Court of Appeals reversed and held the inventory search invalid due to the government's failure to prove the existence of a standardized inventory search procedure.[7] Moreover, in the event that such a procedure did exist,

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[1] No. 155, 2003 WL 22989705 (N.Y. Dec. 22, 2003).
[2] *Id.*
[3] *Id.* at *2.
[4] U.S. CONST. amend. IV provides 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, and no Warrants shall issue, but upon probable cause. . . ."
[5] N.Y. CONST. art. I § 12 provides 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, and no warrants shall issue, but upon probable cause. . . ."
[6] *Johnson*, 2003 WL 22989705, at *2.
[7] *Id.*

the government offered neither evidence that the policy's means were "rationally designed to meet the objectives" of a permissible inventory search nor evidence that the police officer in this particular case effectuated a proper inventory search.[8]

The arresting officer and his partner, members of a plainclothes street crime unit formed to deal with "aggressive crimes," were patrolling an area of Harlem in an unmarked car when they observed Johnson's vehicle, bearing Virginia license plates, weaving in and out of traffic at a high rate of speed and without always using a turn signal.[9] The officers followed Johnson for about eight minutes; during this time they observed other vehicles and pedestrians moving out of the path of the vehicle.[10] After pulling Johnson over, one of the officers noticed him reaching over and opening then closing his glove compartment.[11] The officer informed Johnson that he was "driving kind of reckless" and requested that he produce his license and registration, whereupon Johnson furnished his license, but claimed that he did not have the rental agreement for the vehicle.[12] The officer suggested that Johnson look in the glove compartment for the agreement, but Johnson stated that it was not in there.[13] Subsequently, a report on Johnson's license showed it was suspended; the officer had Johnson exit the vehicle, conducted a

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[8] *Id.* (citing People v. Galak, 610 N.E.2d 362, 365 (N.Y. 1993)).
[9] *Id.* at *1.
[10] *Id.*
[11] *Johnson*, 2003 WL 22989705, at *1.
[12] *Id.*
[13] *Id.*

pat-down search and directed Johnson to wait at the back of the vehicle.[14] At this time the officer had yet to inform Johnson that he was under arrest for driving with a suspended license.[15] The officer then opened the vehicle's glove compartment and, finding a loaded handgun which he left in the glove compartment, handcuffed Johnson and escorted him to the precinct.[16] Johnson claimed that he was a bodyguard and the gun was for protection.[17] No inventory forms were completed at the scene or the precinct; however, a stop and frisk report completed by the officer stated that a loaded firearm was recovered during a search incident to arrest.[18] The vehicle was not vouchered at the precinct and upon production of the rental agreement, the vehicle was returned to Johnson's wife.[19]

The hearing court granted Johnson's motion to suppress the gun, rejecting the government's argument that the gun was recovered pursuant to a valid inventory search.[20] The court based its decision on a lack of evidence of standardized procedures for conducting such searches.[21] The appellate division reversed,

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[14] *Id.*
[15] *Id.*
[16] *Johnson*, 2003 WL 22989705, at *1.
[17] *Id.*
[18] *Id.* at *2.
[19] *Id.*
[20] *Id.*
[21] *Johnson*, 2003 WL 22989705, at *2. Additionally, the hearing court found the government's claim of an inventory search was:

> less than a believable claim and it appears to be merely a pretext to cover for what was the officer's desire in the first place, to see what the defendant was up to and to somehow get into the interior of his car to see if the defendant was in possession of contraband or the weapon.

relying on *People v. Robinson*,[22] which was decided after the trial court granted Johnson's motion to suppress the gun.[23] In *Robinson*, the New York Court of Appeals, adopting federal constitutional law as a matter of state law, held:

> [W]here a police officer has probable cause to believe that the driver of an automobile has committed a traffic violation, a stop does not violate Article I, [Section] 12 of the New York State Constitution. In making that determination of probable cause, neither the primary motivation of the officer nor a determination of what a reasonable traffic officer would have done under the circumstances is relevant.[24]

The appellate division reasoned that as long as the stop and arrest of Johnson were lawful in the first instance, the officer's motive in performing the inventory search was inconsequential.[25] The New York Court of Appeals reversed, holding that the government failed to make a threshold showing that a valid inventory search was conducted and further, that the appellate division improperly applied the law governing pretext stops to inventory searches.[26] First, the court noted that police can perform inventory searches on impounded vehicles following the lawful arrest of the driver.[27] The purposes of an inventory search are to "protect the property of the defendant, to protect the police against

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Id. at *3.

[22] 767 N.E.2d 638 (N.Y. 2001).

[23] *Johnson*, 2003 WL 22989705, at *3.

[24] *Robinson*, 767 N.E.2d at 642.

[25] *Johnson*, 2003 WL 22989705, at *3.

[26] *Id.* at *2-*3.

[27] *Id.* at *2.

a claim of lost property, and to protect police personnel and others from any dangerous instruments."[28] However, inventory searches "must not be a ruse for a general rummaging in order to discover incriminating evidence"[29] and therefore, an inventory search must be conducted under "an established procedure clearly limiting the conduct of individual officers that assures that the searches are carried out consistently and reasonably."[30] In this case, the government failed to provide proof of a standardized method for conducting inventory searches.[31] Furthermore, the court reasoned, if a policy did exist, the People failed to show either that the officer followed it[32] or that it was "rationally designed to meet the objectives that justify inventory searches in the first place,"[33] such as "accounting for the contents of the vehicle and to protect others from harm, and that properly limit[ ] an officer's discretion."[34] Further, since the officer only searched the glove compartment and then left the loaded gun in the vehicle, the officer could not have been following an established procedure.[35] Valid inventory

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[28] *Id.* (citing Florida v. Wells, 495 U.S. 1, 4 (1990)).

[29] *Id.* (citing *Wells*, 495 U.S. at 4).

[30] *Johnson,* 2003 WL 22989705, at *2 (citing *Galak*, 610 N.E.2d at 365) (reasoning that the standardized procedures must "limit the discretion of the officer in the field.").

[31] *Id.*

[32] *Id.* The officer testified that he was aware of the general objectives of inventory searches and that searching just the glove compartment was pursuant to such a search. *Id.*

[33] *Id.* (citing *Galak*, 610 N.E.2d at 362).

[34] *Id.*

[35] *Johnson,* 2003 WL 22989705, at *2.

searches may reveal admissible incriminating evidence, but uncovering such evidence cannot be the objective of the search.[36]

Additionally, "[t]he policy or practice governing inventory searches should be designed to produce an inventory," and therefore, a useable inventory must be created by the procedure.[37] Yet, the officer in the instant case completed a stop and frisk report claiming that the search was conducted incident to arrest, but did not "fill out the hallmark of an inventory search: a meaningful inventory list."[38] Consequently, Johnson's motion to suppress the handgun was granted and the indictment against him dismissed because of the government's failure to prove the evidence resulted from a valid inventory search of the impounded vehicle's glove compartment.[39]

The United States Supreme Court has "consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents."[40] In *South Dakota*

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[36] *Id.*
[37] *Id.* at *3 (citing *Wells*, 495 U.S. at 4).
[38] *Id.*
[39] *Id.*
[40] South Dakota v. Opperman, 428 U.S. 364, 373 (1976). In *Opperman*, police impounded the defendant's car after issuing multiple citations for violations of a parking ordinance. The car was towed to a city lot where a police officer observed a watch on the dashboard and other personal property on the car's back seat and floorboard. The officer ordered the car unlocked and, using a standard inventory form pursuant to standard police procedures, inventoried the contents of the car. In the unlocked glove compartment, the officer found a plastic bag containing marijuana, for which defendant was arrested and charged with possession. Defendant appealed the denial of his motion to suppress the marijuana after he was convicted in a jury trial. The Supreme Court of South

v. Opperman, the Court considered whether the inventory search of a lawfully impounded vehicle, including the car's unlocked glove compartment, violated the Fourth Amendment of the United States Constitution. Initially, the Court noted that although vehicles are "effects" within the purview of the Fourth Amendment, they are treated differently than homes or offices for Fourth Amendment purposes and "warrantless examinations of automobiles have been upheld in circumstances in which a search of a home or office would not."[41] One reason for the distinction is the lessened expectation of privacy an individual has in a vehicle compared to the expectation of privacy in the home or office[42] because a vehicle's "function is transportation and it seldom serves as one's residence or as a repository of personal effects."[43] Also, due to the "inherent mobility" of a car, enforcement of a warrant requirement would not be possible.[44]

Furthermore, the ability of the police to perform "community caretaking functions,"[45] such as removing vehicles from the streets when they obstruct traffic or threaten public safety, is beyond reproach.[46] Once a vehicle is lawfully impounded, local

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Dakota reversed the conviction, holding that the evidence resulted from a search in violation of the Fourth Amendment. *Id.* at 365-67.

[41] *Id.* at 367.

[42] *Id.*

[43] *Id.* at 368 (citing Cardwell v. Lewis, 417 U.S. 583, 590 (1974)).

[44] *Id.* at 367.

[45] *Opperman*, 428 U.S. at 368 (citing Cady v. Dombrowski, 413 U.S. 433, 441 (1973)).

[46] *Id.* at 369. The Court recognized that state court decisions upheld these caretaking procedures, if they even considered them searches, as reasonable and constitutional under the Fourth Amendment. *Id.* at 370-71. Additionally, the Court noted the higher number of occasions for state police departments to take

police can secure and inventory the vehicle's contents according to a "routine practice" developed with the objectives of protecting the owner's property, protecting the police from claims of lost or stolen property and protecting the police from any dangerous instrumentalities in the automobile.[47] Therefore, the Court reasoned, when the police are in lawful custody of a vehicle, taking an inventory of the property for itemization purposes is reasonable and this "reflects the underlying principle that the fourth amendment [sic] proscribes only Unreasonable [sic] searches."[48] On the other hand, "[i]t would be unreasonable to hold that the police, having to retain the car in their custody . . . had no right, even for their own protection, to search it."[49] Under Fourth Amendment jurisprudence, every search does not require a warrant; rather, the amendment "prohibits only '*unreasonable* searches and seizures.'"[50] Therefore, "[w]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case."[51]

Accordingly, the Court upheld the search in *Opperman*,

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custody of a vehicle for noncriminal routine procedures while federal law enforcement officers generally assume custody of a vehicle for criminal investigatory purposes, thereby triggering the probable cause warrant requirement. *Id.* at 371 nn.4-5.

[47] *Id.* at 369.

[48] *Id.* at 371 (citing United States v. Gravitt, 484 F.2d 375, 378 (5th Cir. 1973)).

[49] *Id.* at 373 (citing Cooper v. California, 386 U.S. 58, 61-62 (1967)).

[50] *Opperman*, 428 U.S. at 372-73 (citing Coolidge v. New Hampshire, 403 U.S. 443, 509 (1971) (Black, J., concurring and dissenting)).

[51] *Id.* at 375 (citing *Cooper*, 386 U.S. at 59).

concluding that it was conducted by police using a "standard procedure, essentially like that followed throughout the country," and was not a "pretext concealing an investigatory police motive," but rather, was a reasonable "caretaking search of a lawfully impounded automobile."[52] Moreover, inventorying the contents of the unlocked glove compartment did not render the scope of the search unreasonable because "once the policeman was lawfully inside the car to secure the personal property in plain view, it was not unreasonable to open the unlocked glove compartment, to which vandals would have had ready and unobstructed access once inside the car."[53] Thus, the conduct of the police was not "unreasonable" under the Fourth Amendment.[54]

Therefore, under federal constitutional law, "reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment."[55] In *Colorado v. Bertine*, the Supreme Court upheld a standardized inventory procedure that mandated the police to open closed containers and

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[52] *Id.* at 375-76.

[53] *Id.* at 376 n.10.

[54] *Id.* at 376.

[55] Colorado v. Bertine, 479 U.S. 367, 374 (1987). *See* United States v. Lumpkin, 159 F.3d 983, 987 (6th Cir. 1998) (upholding as constitutional Illinois' unwritten inventory policy allowing the examination and inventory of "front and rear seat areas, glove compartment, map case, sun visors, and trunk *and engine compartments*" for all vehicles and boats in police custody); United States v. Garner, 181 F.3d 988, 992 (8th Cir. 1999) (upholding St. Paul, Minnesota's inventory search policy which did not require officers to create an inventory list on a specific form or conduct inventory searches in a particular manner; written policy merely provided that inventory searches were to be conducted prior to the vehicle being towed and allowed police to open a container if they could not determine its contents from the exterior).

list their contents.[56] The Court reasoned, "an inventory search may be 'reasonable' under the Fourth Amendment even though it is not conducted pursuant to a warrant based upon probable cause" since it not only serves the strong governmental interests in protecting the owner's property and in guarding the police from danger, but there is a "diminished expectation of privacy in an automobile."[57] The Court noted that inventory searches implicate neither the policies behind the warrant requirement nor the "related concept of probable cause" because "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures."[58] Thus, incriminating evidence uncovered during an inventory search of Bertine's van was admissible to prove criminal charges against him because the police followed a standard policy without acting in "bad faith or for the sole purpose of investigation."[59]

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[56] *Bertine*, 479 U.S. at 374 n.6. In *Bertine*, the police inventoried the defendant's impounded van at the arrest site after the defendant was taken into custody for driving while intoxicated. Upon opening a closed backpack located directly behind the front seat of the van, the officer discovered metal canisters containing cocaine, methaqualone tablets, cocaine paraphernalia, and cash. Bertine moved to suppress the evidence, contending that the inventory search of the closed backpack and containers "exceeded the permissible scope" of an inventory search under the Fourth Amendment. The Supreme Court of Colorado, relying on Fourth Amendment case law related to investigatory searches, held that the inventory search violated the Fourth Amendment. *Id.* at 368-70.

[57] *Id.* at 371-72. The officer who conducted the search in *Bertine* testified that the "vehicle inventory procedures of the Boulder Police Department are designed for the '[p]rotection of the police department,'" to guard against claims of lost or stolen valuables, and to allow police to ensure that the vehicle contains no dangerous weapons or explosives. *Id.* at 373 n.5.

[58] *Id.* at 371.

[59] *Id.* at 372. *See* United States v. Rowland, 341 F.3d 774, 780-81 (8th Cir. 2003) (striking down an inventory search as unconstitutional because police

However, inventory searches conducted without a standardized policy are "not sufficiently regulated to satisfy the Fourth Amendment," and incriminating evidence discovered under such conditions is not admissible.[60] In *Florida v. Wells*, relied on by the New York Court of Appeals in *Johnson*, the Supreme Court held that inventory searches must be carried out according to "standardized criteria or established routine" so as to guard against the subterfuge of investigatory searches cloaked as mere caretaking procedures.[61] Yet, with regard to policies dealing with the opening of containers, the Court noted, "there is no reason to insist that they be conducted in a totally mechanical 'all or nothing' fashion."[62] Rather, police procedures do not violate the Fourth Amendment simply because they allow the officer "sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the

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only recorded the incriminating property they recovered and not all the property in the vehicle, as required by the department's inventory policy and finding the search a pretext for what was really an investigatory motive since the officer's failure to record defendant's lawful property implied that police were not "really acting to ensure the safe return of property.").

[60] *Wells*, 495 U.S. at 5.

[61] *Id.* at 4. In *Wells*, the defendant consented to the police opening the trunk of his impounded car after he was arrested for driving while intoxicated. A search of the vehicle at the impound yard yielded two marijuana cigarette butts in an ashtray and a locked suitcase in the trunk. Upon the officer's directive, the suitcase was opened, revealing a garbage bag containing marijuana. Wells moved to suppress the marijuana as resulting from a search violating the Fourth Amendment. The Supreme Court of Florida held that under *Bertine*, the police procedure "must mandate either that all containers will be opened during an inventory search, or that no containers will be opened" because "[t]here can be no room for discretion." *Id.* at 2-3.

[62] *Id.* The Court also stated that policies requiring all containers to be opened and those requiring no containers be opened are "unquestionably permissible." *Id.*

container itself."[63] In *Wells*, however, like the police department in *Johnson*, the Florida Highway Patrol "had no policy whatever with respect to the opening of closed containers encountered during an inventory search."[64] Consequently, the Court concluded that the search yielding the marijuana found in the defendant's impounded vehicle violated the Fourth Amendment and the Florida Supreme Court properly suppressed the evidence.[65]

New York's court holdings are consistent with United States Supreme Court holdings in analyzing the constitutionality of inventory searches.[66] In *People v. Galak*, the New York Court of Appeals considered the constitutionality of an inventory search under both the Fourth Amendment and the New York Constitution.[67] The defendant, a passenger in the impounded vehicle, was charged with various crimes after a search of the vehicle revealed his dagger, blackjack and ignition device.[68] The officer who conducted the search completed an inventory report

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[63] *Id.* For example, a policy only requiring the opening of containers if the officer cannot detect their contents by examining the exterior is a permissible exercise of discretion. *Id.*

[64] *Id.* at 4-5.

[65] *Wells*, 495 U.S. at 5.

[66] People v. Gonzalez, 465 N.E.2d 823, 825 (N.Y. 1984) (acknowledging the Supreme Court's ruling upholding the opening of containers as part of an inventory search in Illinois v. Lafayette, 462 U.S. 640 (1983) and deeming it "desirable to keep the law of this State consistent with the Supreme Court's rulings on inventory searches. . . .").

[67] *Galak*, 610 N.E.2d at 363.

[68] *Id.* at 364. Defendant Galak was charged with criminal possession of a weapon, sale or possession of master or manipulative keys for motor vehicles and possession of burglary tools. *Id.*

some five hours after another officer drove the car back to police headquarters.[69]

At Galak's suppression hearing, the county court held the search to be reasonable and the incriminating evidence admissible; the appellate division affirmed the judgment of conviction.[70] The Court of Appeals, however, reversed, holding that the "department's policy is so unrelated to the governmental interests it is intended to promote and so lacking in appropriate safeguards against police abuse that it does not survive constitutional scrutiny."[71] First, the court reasoned, procedures governing inventory searches must be "rationally designed to meet the objectives that justify the search in the first place."[72] Additionally, while there is no requirement that departmental policies adopt an all or nothing attitude, a policy must sufficiently limit the officer's discretion to avoid searches becoming "an excuse for general rummaging to discover incriminating evidence."[73]

In *Galak*, the officer testified that he was unaware of any written regulations for conducting inventory searches;[74] rather,

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[69] *Id.*

[70] *Id.* Both lower courts found that the inventory search was conducted according to a standard procedure; because there was support in the record for such a finding, the Court of Appeals was bound by it. *Id.*

[71] *Id.* at 363.

[72] *Galak,* 610 N.E.2d at 365 (citing *Wells*, 495 U.S. at 4).

[73] *Id.*

[74] The fact that a policy is unwritten is not fatal to a finding that the procedure passes constitutional muster. *See* People v. Thomas, 567 N.Y.S.2d 557, 558-59 (App. Div. 3d Dep't 1991) (upholding an unwritten inventory procedure requiring impounded cars to be inventoried to safeguard the owner's property and to protect the police against claims of loss or theft; valuable objects, in the officer's opinion, were to be noted on an evidence record); *Lumpkin*, 159 F.3d at 987-88 (upholding an unwritten inventory search policy allowing the engine

training officers and supervisors schooled field officers with on-the-job training.[75] Also, no inventory report was generated while the search was conducted, even though the department maintained a standard form for use during inventory searches; instead, the report was filled out five hours after the search took place.[76] Further, there was no standard for determining what items should be taken into custody and which should be returned to the owner or driver.[77] While the official form included categories for cataloging the car's equipment and vehicle damage, under the search procedure only items retained by the police were required to be listed.[78] Finally, although the property owner received a copy of the form, it failed to specify what items were returned, which were left in the car, and the property owner was not required to sign a receipt showing that his property had been returned.[79]

Consequently, on these facts, the court held that the "procedure was so unrelated to the underlying justification for inventory searches that we have no difficulty finding it to be

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compartment to be searched on the undisputed testimony of the officer that the search was conducted according to standard operating procedure). *Cf. Rowland*, 341 F.3d at 779-80 (rejecting the government's argument that the court can consider unwritten and written policies in determining what comprises the inventory search procedure of a law enforcement agency when an unwritten policy conflicts with a written one).

[75] *Galak*, 610 N.E.2d at 365. The officer also agreed with defense counsel's account that instead of following particular inventory search instructions, officers used their judgment at the scene. *Id.*

[76] *Id.*

[77] *Id.* at 365-66. The officer testified that "*some kinds* of contraband or weapons" were vouchered and that defendants "*usually* take [their money or valuables]." *Id.* at 366.

[78] *Id.* at 366.

[79] *Id.*

arbitrary and irrational, and the search it generated unreasonable."[80] The procedure failed to do what it was supposed to do — generate a usable inventory.[81] Moreover, the procedure gave the officers unconstitutionally broad discretion in conducting the search.[82] Rejecting the government's argument that police exercised permissible discretion in determining which property to keep and which to give back only after the search was completed, the court reasoned that with such "'uncanalized discretion' . . . there is created not just the possibility but the probability that the search and seizure of a citizen's personal effects will be conducted inconsistently, subject to caprice and the personal preferences of the individual officers — in short, it will be conducted arbitrarily."[83] Accordingly, the court concluded that the search, as conducted under the police department's inventory policy, was unreasonable and, therefore violated both the Fourth Amendment and Article I, Section 12 of the New York Constitution.[84]

On the other hand, inventory searches that are reasonable and conducted under a "'singular familiar standard' or established police agency procedure," and limiting the discretion of the searching officer are upheld as constitutional in New York.[85] In

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[80] *Galak*, 610 N.E.2d at 366.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.* at 367. The court expressly stated that it was not deciding what constituted timely completion of an inventory report, nor whether unwritten inventory policies are constitutionally permissible. *Id.* at 366.

[85] People v. Salazar, 640 N.Y.S.2d 167, 168 (App. Div. 2d Dep't 1996) (citing *Galak*, 610 N.E.2d at 362).

People v. Salazar, the defendant was a passenger in a vehicle stopped for speeding by a New York State police trooper; the car was impounded after the trooper established that the driver and defendant had suspended licenses.[86] While conducting an inventory search, the trooper, searching specific areas and items as per police inventory form "General 21," discovered a cellophane bag the size of a brick in an unlocked bag in the trunk.[87] The defendant attempted to escape, leading the trooper to suspect that the bag contained narcotics, and upon opening it, he found cocaine.[88] The court upheld the search as reasonable because the trooper's testimony and the inventory search form completed by the trooper while conducting the search established that the trooper followed a standard operating procedure.[89] The court reasoned that inventory of every item in the vehicle is not required, and the procedure here was rationally designed to serve the purposes of an inventory search as well as to limit the trooper's discretion to ensure that he was not simply using the inventory search to conduct an investigation.[90]

Thus, both the federal and New York courts are in accord in construing their respective constitutional search and seizure provisions. Under the United States Supreme Court's Fourth Amendment holdings, determining the reasonableness of a search "depends on a balance between the public interest and the

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[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Salazar*, 640 N.Y.S.2d at 168.

individual's right to personal security free from arbitrary interference by law officers"[91] and courts have adopted this reasoning as the law in New York.[92] In the case of inventory searches, the governmental interests advanced — protecting the owner's property, protecting the police against claims of lost or stolen property and protecting the police from potential danger — along with the individual's lessened expectation of privacy in an automobile, justify allowing these warrantless searches.[93]

However, limitations on inventory searches imposed by the Fourth Amendment and Article I, Section 12 of the New York State Constitution, which require standardized procedures and limit the discretion of the searching officer, protect citizens from '*arbitrary* interference' by law enforcement.[94] Given that inventory searches can reveal admissible incriminating evidence gathered as a result of a warrantless search and without the benefit of an impartial magistrate issuing a warrant based on probable cause, such protection is essential to guard against unreasonable searches.

Denise Shanley

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[91] United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975).
[92] *Galak*, 610 N.E.2d at 364.
[93] *Id.* at 364-65.
[94] *Id.* at 366.