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## Supreme Court, Monroe County, People v. Owens

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**Supreme Court, Monroe County, People v. Owens**

**Cover Page Footnote**

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## SUPREME COURT, MONROE COUNTY

People v. Owens<sup>1</sup>  
(decided August 30, 2000)

In this death penalty case, the defendant, John F. Owens, moved to preclude the admission of any alleged oral statements made by him, claiming the police failed to record electronically the Miranda warnings, any waiver of the warnings, as well as any subsequent custodial interrogation.<sup>2</sup> Defendant contended that the failure to electronically record his alleged oral statements violated the Due Process Clause of the Federal<sup>3</sup> and New York State<sup>4</sup> Constitutions. Defendant relied on the Alaska Supreme Court's decision in *Stephan v. Alaska*<sup>5</sup> where it was held that the failure to electronically record a custodial interrogation while the suspect was in a place of detention violated the suspect's right of due process under Alaska's constitution.<sup>6</sup>

The Supreme Court, Monroe County began its analysis by stating, “[o]nly one other state’s highest court, the Minnesota Supreme Court, acting under its supervisory power, has adopted a recording requirement.”<sup>7</sup> The court added, “at least one state legislature has codified a similar recording requirement,” referring to a Texas code enacted in 1999.<sup>8</sup> The court also noted that “the American Law Institute’s Model Code of Pre-Arrest Procedure and the Uniform Rules of Criminal Procedure require the electronic recording of custodial interviews.”<sup>9</sup>

In denying defendant’s motion, the Supreme Court, Monroe County refused to prescribe a common law requirement mandating that police electronically record Miranda warnings, any

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<sup>1</sup> 185 Misc. 2d 661, 713 N.Y.S.2d 452 (N.Y. Sup. Ct. 2000).

<sup>2</sup> *Id.* at 662, 713 N.Y.S.2d at 453.

<sup>3</sup> U.S. CONST. amend XIV, § 1. The Fourteenth Amendment provides in pertinent part “No State shall . . . deprive any person of life, liberty, or property *without due process of law* . . .” *Id.* (emphasis added).

<sup>4</sup> N.Y. CONST. art. I, § 6. The New York Constitution provides in pertinent part: “No person shall be deprived of life, liberty or property without due process of law.” *Id.*

<sup>5</sup> 711 P.2d 1156 (Alaska 1985).

<sup>6</sup> *Id.* at 1158.

<sup>7</sup> *People v. Owens*, 185 Misc. 2d at 662, 713 N.Y.S.2d at 453 (quoting *State v. Scales*, 518 N.W.2d 587, 592 (1994)).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

waiver thereof, and any subsequent custodial interrogation, absent any statutory or constitutional authority.<sup>10</sup> Accordingly, the court held that a recording requirement is not mandated by federal or state due process.<sup>11</sup>

In its analysis, the court referred to *Stephan v. Alaska*, which held that because a recording does not meet the standard of “constitutional materiality,” as enunciated by the United States Supreme Court in *California v. Trombetta*,<sup>12</sup> custodial interrogations need not be recorded to satisfy the due process requirements of the federal constitution.<sup>13</sup> To meet this standard of “constitutional materiality,” evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.<sup>14</sup> The Supreme Court, Monroe County then proceeded to hold that even in the context of a capital case, the New York State Constitution does “not extend beyond the parameters of federal constitutional guarantees.”<sup>15</sup>

In *California v. Trombetta*,<sup>16</sup> the respondents submitted to a breathalyzer test<sup>17</sup> after being stopped by police officers on suspicion of drunken driving.<sup>18</sup> After registering a blood-alcohol concentration substantially higher than the legal limit in California at that time, the respondents were presumed to be intoxicated and were charged with driving while intoxicated, in violation of California law.<sup>19</sup> The respondents filed pre-trial motions to suppress the breathalyzer test results on the ground that samples of

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 467 U.S. 479 (1984).

<sup>13</sup> *Owens*, 185 Misc. 2d at 662, 713 N.Y.S.2d at 453.

<sup>14</sup> *California v. Trombetta*, 467 U.S. at 489 (citing *U.S. v. Agurs*, 427 U.S. 97, 109-10 (1976)).

<sup>15</sup> *Owens*, 185 Misc. 2d at 662, 713 N.Y.S.2d at 453.

<sup>16</sup> 467 U.S. 479 (1984).

<sup>17</sup> *Id.* at 482. Drunken driving suspects are given the option, under California law, of having either a blood test, a urine test or a breath test performed in order to determine their blood-alcohol concentration. Here, the test performed was actually called an Intoxilyzer test, a type of breath testing device. *Id.*

<sup>18</sup> *Id.* at 482.

<sup>19</sup> *Id.*

respondents' breath were not preserved by the arresting officers.<sup>20</sup> The respondents argued that if a breath sample would have been preserved, the incriminating breathalyzer results could have been impeached.<sup>21</sup> The Municipal Court denied respondents' motions to suppress; the respondents sought direct appeal and their appeals were eventually granted and transferred to the Court of Appeal.<sup>22</sup> The California Court of Appeal, in determining that the arresting officers had the ability to preserve the respondents' breath samples and in accepting that the breath samples would be useful to respondents' defenses, ruled in favor of respondents, ordering the test results inadmissible.<sup>23</sup> The Court of Appeal reasoned, "[d]ue process demands simply that where evidence is collected by the state, as it is with . . . any . . . breath testing device, law enforcement agencies must establish and follow rigorous and systematic procedures to preserve the captured evidence or its equivalent for the use of the defendant."<sup>24</sup> The California Supreme Court denied *certiorari*, and the case went to the United States Supreme Court.<sup>25</sup>

Ultimately, the United States Supreme Court, in an opinion written by Justice Marshall, reversed the judgment of the California Court of Appeal and remanded the case for further proceedings, holding that "the Due Process Clause of the Fourteenth Amendment does not require that law enforcement agencies preserve breath samples in order to introduce the results of breath-analysis tests at trial."<sup>26</sup> In *Trombetta*, the Court held that this is true, even though the process itself is technically feasible.<sup>27</sup> The Court reasoned that the policy of non-preservation of breath samples was not prohibited under the United States Constitution because the test of "constitutional materiality" was

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<sup>20</sup> *Trombetta*, 467 U.S. at 482.

<sup>21</sup> *Id.* at 483.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Trombetta*, 467 U.S. at 483-84.

<sup>25</sup> *Id.* at 484.

<sup>26</sup> *Id.* at 491. Justice Marshall added in a footnote, "State courts and legislatures, of course, remain free to adopt more rigorous safeguards governing the admissibility of . . . evidence than those imposed by the Federal Constitution."  
*Id.* at 491, n.12.

<sup>27</sup> *Id.* at 482-83.

not met on the facts of the case.<sup>28</sup> “Whatever duty the constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect’s defense.”<sup>29</sup>

The New York State courts have also recognized the requirement of “constitutional materiality” as set forth in *Trombetta*. In *People v. Alvarez*,<sup>30</sup> the New York Court of Appeals confronted virtually the same issue of whether to suppress breathalyzer test results where a second breath sample was not available for the defendants’ use in their defense. The appellants were arrested for drunk driving offenses after submitting to a breathalyzer test, after the test results indicated a blood alcohol content higher than the legal limit in New York.<sup>31</sup> The appellants moved to suppress the test results, arguing that because the breath samples were destroyed by the administration of the tests, the Due Process Clause of the State Constitution required that the police take and preserve a second sample for later use by the appellants.<sup>32</sup> The Criminal Court of the City of New York held that the taking and preservation of a second breath sample, which it found to be a “simple and accurate” procedure, was required under the New York State Constitution and therefore, the court suppressed the primary breathalyzer results.<sup>33</sup> The Appellate Term of the Supreme Court in the First Judicial Department reversed, denying appellants’ motion to suppress.<sup>34</sup> The appellants moved for leave to appeal the Appellate Term’s decision and the New York Court of Appeals granted the motion, affirming the Appellate Term’s denial of appellants’ suppression motions.<sup>35</sup> The New York Court of Appeals adopted the reasoning of *Trombetta*, that “the failure of the police to take and preserve a breath sample for later testing does not deprive criminal defendants of a ‘meaningful opportunity

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<sup>28</sup> *Trombetta*, 467 U.S. at 488-89.

<sup>29</sup> *Id.* (referring to *U.S. v. Agurs*, 427 U.S. at 109-10).

<sup>30</sup> 70 N.Y.2d 375, 515 N.E.2d 898, 521 N.Y.S.2d 212 (1987).

<sup>31</sup> *Alvarez*, 70 N.Y.2d at 377, 515 N.E.2d at 898, 521 N.Y.S.2d at 212 (explaining that, “[i]n each case the police took a single breath sample using a Smith & Wesson Model 900A Breathalyzer machine”).

<sup>32</sup> *Id.* at 377, 515 N.E.2d at 898-99, 521 N.Y.S.2d at 212.

<sup>33</sup> *Id.* at 378, 515 N.E.2d at 899, 521 N.Y.S.2d at 212.

<sup>34</sup> *Id.*

<sup>35</sup> *Alvarez*, 70 N.Y.2d at 378, 515 N.E.2d at 899, 521 N.Y.S.2d at 212.

to present a complete defense,' and thus does not violate the Federal Constitution," as a matter of New York State Constitutional law.<sup>36</sup>

The New York Court of Appeals used both an "interpretive" and a "non-interpretive" analysis in considering whether in a particular case such as *Alvarez*, the New York Constitution provides greater protection than is afforded by the Federal Constitution.<sup>37</sup> The practical considerations of the need for Federal-State uniformity was also considered by the Court of Appeals.<sup>38</sup> In applying these principles to the case at bar, the Court of Appeals found no basis for departing from *Trombetta* as a matter of State constitutional law.<sup>39</sup>

The interpretive factors of textual, structural and historical differences between the due process provisions are not material for present purposes. Under a non-interpretive analysis, there can be no doubt in New York that the fairness of a criminal proceeding is of particular State concern, and New York historically has provided various protections in this area above the Federal Constitutional minimum . . . . The Supreme Court's analysis and result in *Trombetta*, however, are consonant with New York State law and . . . we believe, they are analytically correct and provide a fair and proper rule under our State Constitution.<sup>40</sup>

Furthermore, the Court of Appeals found that New York case law does not support any requirement that the police affirmatively gather evidence for the accused, nor does it impede

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* The Court of Appeals, looking at its recent decision in *People v. P.J. Video*, 68 N.Y.2d 296, first identified "interpretive" factors, which focus on differences in the text, structure or historical underpinnings between the State and Federal Constitutions, then considered "non-interpretive" factors, including whether the right at issue has historically been afforded greater protection in New York than is presently required under the federal constitution, whether the right is "of peculiar State or local concern," or whether the State citizenry has "distinctive attitudes" toward the right. *Id.*

<sup>38</sup> *Id.* at 378-79, 515 N.E.2d at 899, 521 N.Y.S.2d at 212.

<sup>39</sup> *Id.* at 379, 515 N.E.2d at 900, 521 N.Y.S.2d at 212.

<sup>40</sup> *Alvarez*, 70 N.Y.2d at 379-80, 515 N.E.2d at 900, 521 N.Y.S.2d at 212.

the defendant's ability to obtain this evidence himself for defense purposes.<sup>41</sup> Ultimately, the Court of Appeals forcefully stated, "[i]n sum, the analysis of the court in *Trombetta*, which we find persuasive, finds full support in the decisions of the courts of this State."<sup>42</sup>

In sum, federal and New York State law treat due process issues with respect to preservation of evidence in the same manner. In analyzing whether a lack of recording requirement violates an individual's constitutional right to due process of law under the United States Constitution, federal courts apply a "constitutional materiality" standard to determine whether that non-preservation substantially affects an individual's constitutional rights. The New York State courts have generally adhered to the "constitutional materiality" standard in protecting an individual's right to a fair trial. This standard requires a case-by-case determination of whether the lack of recording requirement is constitutionally significant. Although both *Trombetta* and *Alvarez* discuss the preservation of breath samples in drunk driving cases, such cases can be easily analogized to *Owens*, where the defendant also moved to suppress evidence, although of a different kind, because the evidence, alleged oral statements, have not been "preserved" through electronic recording.

*Wendy Holland*

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<sup>41</sup> *Id.* at 381, 515 N.E.2d at 901, 521 N.Y.S.2d at 212. The Court of Appeals added that "the Legislature has provided that a defendant has a statutory right to have a personal physician administer an additional chemical test." *Id.*

<sup>42</sup> *Alvarez*, 70 N.Y.2d at 380, 515 N.E.2d at 900, 521 N.Y.S.2d at 212.