



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 19
Number 2 *New York State Constitutional
Decisions: 2002 Compilation*

Article 19

April 2015

Supreme Court, Bronx County, People v. Nieto

Jean D'Alessandro

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), and the [Fourth Amendment Commons](#)

Recommended Citation

D'Alessandro, Jean (2015) "Supreme Court, Bronx County, People v. Nieto," *Touro Law Review*. Vol. 19: No. 2, Article 19.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol19/iss2/19>

This Search and Seizure is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Supreme Court, Bronx County, People v. Nieto

Cover Page Footnote

19-2

SUPREME COURT OF NEW YORK, BRONX COUNTY

People v. Nieto¹
(decided July 22, 2002)

Romulo Nieto was arrested for shooting a man to death and wounding another.² Nieto filed a motion to suppress statements made to the New York City police, based both on *Payton v. New York*,³ and *People v. Harris*.⁴ Prior to a determination of the issues, the New York Supreme Court, Bronx County, had to decide what the effect is in New York of an arrest made in New Jersey by New York police, in violation of New Jersey law.⁵ The court also had to decide the underlying preliminary issue of whether Article I, Section 12 (the Search and Seizure Clause) of the New York State Constitution⁶ affords extra-territorial effects, so as to apply to a New York defendant apprehended in New Jersey by New York police.⁷ The court held that the effect of an arrest outside New York State, in violation of New Jersey law, was controlled by *People v. Sampson*,⁸ where the New York Court of Appeals held that as long as a defendant's constitutional rights were not violated, statements obtained at the time of arrest were not subject to suppression.⁹

The *Nieto* court held that because Nieto's arrest was based on probable cause, the violation of the New Jersey statute did not

¹ 746 N.Y.S.2d 371, 192 Misc. 2d 537 (Sup. Ct. Bronx County 2002).

² *Id.* at 372, 192 Misc. 2d at 538.

³ *Payton v. New York*, 445 U.S. 573, 576 (1980) ("[T]he Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.").

⁴ *People v. Harris*, 77 N.Y.2d 434, 570 N.E.2d 1051, 568 N.Y.S.2d 702 (1990) (holding that the New York Constitution "requires that statements obtained from an accused following a *Payton* violation must be suppressed unless the taint resulting from the violation has been attenuated.").

⁵ *Nieto*, 746 N.Y.S.2d at 372, 192 Misc. 2d at 538.

⁶ N.Y. CONST. art. 1, § 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"

⁷ *Nieto*, 746 N.Y.S.2d at 372, 192 Misc. 2d at 538.

⁸ 73 N.Y.2d 908, 536 N.E.2d 617, 539 N.Y.S.2d 288 (1989).

⁹ *Id.* at 910, 536 N.E.2d at 618, 539 N.Y.S.2d at 289.

require suppression of statements made.¹⁰ The court also held that Article I, Section 12 of the New York State Constitution does have extra-territorial effects.¹¹ The court reasoned that to hold otherwise would allow New York police free reign to “obtain evidence out of state”¹² and then allow such evidence to be used “with impunity at trial.”¹³ Such free reign would not only violate Article I, Section 12, but would also violate New York’s constitutional right to counsel.¹⁴

On August 12, 1989, Romulo Nieto shot and killed Lucas Castro and wounded Denico Castro in the State of New York.¹⁵ At the time of this incident, Nieto was a New York State resident.¹⁶ Subsequently, Nieto fled to New Jersey, changed his name, and lived under an assumed name in New Jersey for twelve years.¹⁷ On March 29, 2001, New York City police located Nieto and arrested him, without a warrant, in his apartment in New Jersey.¹⁸ The New York City police officers brought Nieto back to New York, rather than surrender him to New Jersey authorities.¹⁹ Nieto made statements to New York City police the night of his arrest at both New Jersey and New York City police stations.²⁰ Nieto sought to suppress these statements, claiming that the arrest in his New Jersey apartment by New York police violated *Payton v. New York*,²¹ where the United States Supreme Court held a defendant cannot be arrested in his home without an arrest warrant,²² unless there are “exigent circumstances.”²³ Such exigent circumstances

¹⁰ *Nieto*, 746 N.Y.S.2d at 372, 192 Misc. 2d at 538.

¹¹ *Id.* at 378, 192 Misc. 2d at 545.

¹² *Id.*

¹³ *Id.*

¹⁴ N.Y. CONST. art. I, § 6 provides 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 No person shall be deprived of life, liberty or property without due process of law.”

¹⁵ *Nieto*, 746 N.Y.S.2d at 372, 192 Misc. 2d at 538.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Nieto*, 746 N.Y.S.2d at 372, 192 Misc. 2d at 538.

²¹ 445 U.S. at 573.

²² *Id.* at 576.

²³ *Id.* at 583.

arise in an emergency or dangerous situation,²⁴ both of which did not apply to Nieto.²⁵ The *Nieto* court held that *Payton* only applied to suppression of statements made in the defendant's home, and was not applicable to Nieto's statements, which were made after his arrest, outside the confines of his home.²⁶ Nieto also argued that because New York police did not surrender him to New Jersey authorities for extradition, his subsequent statements should be suppressed under *People v. Harris*.²⁷

In *People v. Harris*, the New York Court of Appeals held that under the New York State Constitution, statements of an accused, subsequent to a *Payton* violation, are required to be suppressed, "unless the taint resulting from the violation has been attenuated."²⁸ Such suppression is required due to New York's right to counsel rule.²⁹ In New York, the criminal proceeding is initiated at the time an arrest warrant is authorized.³⁰ Therefore, the defendant's right to counsel precedes his actual arrest, and any police interrogation must be conducted with defendant's counsel present.³¹ If, however, the police do not first obtain an arrest warrant, the defendant's right to counsel has not yet attached.³² Attenuation between the *Payton* violation and the statement is fact specific,³³ based on "temporal proximity of the arrest and the statement, the absence of intervening circumstances and the purpose and flagrancy of the police misconduct."³⁴

However, the *Nieto* court held that because the New York police violated New Jersey law³⁵ in not surrendering the defendant to New Jersey authorities, *People v. Sampson*³⁶ controlled.³⁷

²⁴ *Id.*

²⁵ *Nieto*, 746 N.Y.S.2d at 373, 192 Misc. 2d at 539.

²⁶ *Id.* at 373, 192 Misc. 2d at 539.

²⁷ *Id.* at 372, 193 Misc. 2d at 540.

²⁸ *Harris*, 77 N.Y.2d at 437, 570 N.E.2d at 1053, 568 N.Y.S.2d at 704.

²⁹ *Id.* at 439, 570 N.E.2d at 1054, 568 N.Y.S.2d at 705.

³⁰ *Id.* at 440, 570 N.E.2d at 1054, 568 N.Y.S.2d at 705.

³¹ *Id.*

³² *Id.*

³³ *Harris*, 77 N.Y.2d at 440, 570 N.E.2d at 1055, 568 N.Y.S.2d at 706.

³⁴ *Id.* at 441, 570 N.E.2d at 1055, 568 N.Y.S.2d at 706.

³⁵ N.J. STAT. ANN. § 2A:155-5 requires the arrested defendant be turned over to New Jersey officials for extradition proceedings.

³⁶ *Sampson*, 73 N.Y.2d at 908, 536 N.E.2d at 617, 539 N.Y.S.2d at 288.

³⁷ *Nieto*, 746 N.Y.S. 2d at 373, 192 Misc. 2d at 539.

Sampson dictates that the statements would be subject to suppression only if the New York police officers violated the New York State Constitution, not New Jersey's extradition clause.³⁸ Therefore, prior to a determination of Nieto's motion, the court had to first determine if the protections afforded under Article 1, Section 12 of the New York State Constitution extend to New York defendants who are physically outside the State of New York. This was an issue of first impression in New York State. The court held that the New York State Constitution does afford extra-territorial protection to New York defendants.³⁹

The United States Constitution does not afford blanket extra-territorial protection outside of the United States' borders to non-citizens.⁴⁰ However, the United States Supreme Court has held that the Fifth⁴¹ and Sixth⁴² Amendments protect United States citizens abroad.⁴³ The Court differentiated between the wording of the constitutional protections afforded, and held that when the amendment refers to "the accused" or "the person," such as the Fifth and Sixth Amendments, it is applicable to that individual, whether within the confines of the country or not.⁴⁴ Additionally,

[T]he New York Court of Appeals held that where New York police traveled to Vermont and interrogated, arrested and transported the defendant back to New York in violation of Vermont's extradition statute, his subsequent statements were not subject to suppression because there had been no constitutional violation.

Id. (citing *Sampson*, 73 N.Y.2d at 908, 536 N.E.2d at 617, 539 N.Y.S.2d at 288).

³⁸ *Id.*

³⁹ *Id.* at 378, 192 Misc. 2d at 546.

⁴⁰ *United States v. Verdugo-Urquidez*, 494 U.S. 259, 274-75 (1990).

⁴¹ U.S. CONST. amend. V states in pertinent part:

No person shall be held to answer for a capital, or other infamous crime unless on a presentment or indictment of a Grand Jury . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law

⁴² U.S. CONST. amend. VI states in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"

⁴³ *Reid v. Covert*, 354 U.S. 1 (1957).

⁴⁴ *Verdugo-Urquidez*, 494 U.S. at 274-75.

the court reasoned that these two amendments afford protection at trial, which, necessarily, would be within the United States' borders.⁴⁵

However, with regard to the Fourth Amendment,⁴⁶ the United States Supreme Court held that reference to "the people" refers to "a class of persons who are part of a national community, or who have otherwise developed sufficient connection with this country to be considered part of that community."⁴⁷ Therefore, the Court held that the Fourth Amendment and its protections against unreasonable search and seizure apply only to the class of people who are United States citizens or United States residents at the time of the search and seizure.⁴⁸

In *United States v. Verdugo-Urquidez*, a citizen and resident of Mexico was arrested in the United States for various drug-related offenses.⁴⁹ The United States Drug Enforcement Agency (D.E.A.) believed Verdugo-Urquidez was a leader in a large, violent, drug organization, trafficking drugs from Mexico to the United States.⁵⁰ Verdugo-Urquidez was also believed to be responsible for kidnapping, torturing and murdering a D.E.A. agent.⁵¹

The D.E.A., after obtaining the authorization of Mexican authorities, but without a search warrant, searched two of Verdugo-Urquidez's Mexican residences, and seized documents used in his United States criminal prosecution.⁵² Verdugo-Urquidez moved to suppress the evidence, arguing that the search violated the Fourth Amendment of the United States Constitution.⁵³ The trial court granted Verdugo-Urquidez's motion, holding that the Fourth Amendment applies to the search

⁴⁵ *Nieto*, 746 N.Y.S.2d at 376, 192 Misc. 2d at 543.

⁴⁶ U.S. CONST. amend. IV states 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"

⁴⁷ *Verdugo-Urquidez*, 494 U.S. at 265.

⁴⁸ *Id.* at 265.

⁴⁹ *Id.* at 262.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Verdugo-Urquidez*, 494 U.S. at 262.

⁵³ *Id.* at 263.

itself.⁵⁴ The court did not reach the question of whether it applied to a non-resident outside the United States. The Ninth Circuit affirmed, relying on the United States Supreme Court's decisions in *Reid v. Covert*,⁵⁵ which held that American citizens tried abroad were entitled to the protections of the Fifth and Sixth Amendments,⁵⁶ and *INS v. Lopez-Mendoza*,⁵⁷ where the Court held that illegal aliens in the United States were entitled to Fourth Amendment protection.⁵⁸

The United States Supreme Court reversed the Ninth Circuit, distinguishing between citizens and non-citizens, and rights that are protected at trial (Fifth and Sixth Amendments) and rights that are protected at the time of the search (Fourth Amendment), which occurred solely in Mexico.⁵⁹ The Court found the wording of the amendments of utmost importance.⁶⁰ The Fifth and Sixth Amendments extend their protections to the "person" and the "accused," respectively.⁶¹ The Court reasoned that these terms refer directly to the individual defendant and the regulations of criminal procedures.⁶² However, the Fourth Amendment refers to the "right of the people," which the Court found to be significant.⁶³ The Court, through a historical analysis of the Fourth Amendment, held that "the purpose of the Fourth Amendment was to protect the people of the United States against arbitrary action by their own Government; it was never suggested that the provision was intended to restrain the actions of the Federal Government against aliens outside of the United States territory."⁶⁴ The Court also reasoned that even a valid United States issued search warrant would not be binding in a foreign country.⁶⁵ The Court did not address that the warrant, whether

⁵⁴ *Id.*

⁵⁵ *Reid*, 354 U.S. at 1.

⁵⁶ *Id.* at 7.

⁵⁷ 468 U.S. 1032 (1984).

⁵⁸ *Verdugo-Urquidez*, 494 U.S. at 263 (citing decision below).

⁵⁹ *Verdugo-Urquidez*, 494 U.S. at 264.

⁶⁰ *Id.* at 265-66.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 265.

⁶⁴ *Verdugo-Urquidez*, 494 U.S. at 266.

⁶⁵ *Id.* at 274.

valid or not in the foreign country, would still afford protection against unreasonable search and seizure to the United States defendant due to the process involved in obtaining the warrant.

The United States Supreme Court also had to consider the extensive effect of applying the Fourth Amendment extra-territorially on the armed forces stationed outside United States borders.⁶⁶ To hold that the Fourth Amendment applies to aliens extra-territorially, the Court reasoned, could have a significant impact on military operations abroad.⁶⁷ For these reasons, the Fourth Amendment's protections apply differently based solely upon the defendant's citizenship.

The state courts, however, have a further level of analysis in their decisions regarding the application of state constitutions. Not only must the state decision fall within the confines of the state constitution, but must also fall within the protections and limitations of the Federal Constitution. Although out-of-state defendants are not citizens of the state they are being tried in, they are United States citizens fully protected by the Federal Constitution, and entitled to protection under the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution.⁶⁸

In deciding that Article I, Section 12 of the New York State Constitution applies to out-of-state New York defendants, the *Nieto* court was persuaded by the United States Supreme Court's holding in *Verdugo-Urquidez*,⁶⁹ the language of Article I, Section 12, and decisions of the Supreme Courts of Tennessee and Oregon, regarding the extra-territorial effect of their own state constitutions.⁷⁰

In *State v. Cauley*,⁷¹ the Supreme Court of Tennessee held that Tennessee law controlled, the state in which the crime was committed, despite the fact that the defendant was a citizen of Kentucky, the warrant was issued in Kentucky, and was executed

⁶⁶ *Id.* at 273.

⁶⁷ *Id.*

⁶⁸ U.S. CONST. art. IV, § 2, cl. 1 provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

⁶⁹ *Verdugo-Urquidez*, 494 U.S. at 259.

⁷⁰ *Nieto*, 746 N.Y.S.2d at 371, 192 Misc.2d at 537.

⁷¹ 863 S.W.2d 411 (Tenn. 1993).

at defendant's residence in Kentucky.⁷² The court reasoned that when a crime is committed within Tennessee, the evidence that will be used at the trial within Tennessee must conform to Tennessee's constitutional standards.⁷³ The defendant was convicted of a double murder in Tennessee.⁷⁴ The search warrant was issued and executed in Kentucky, the defendant's domicile.⁷⁵ However, Tennessee search warrant requirements are stricter than Kentucky's and, therefore, the defendant argued the search warrant was deficient under Tennessee's Constitution and the evidence should have been suppressed.⁷⁶ The court held that the critical question in whether a state constitutional search and seizure clause should be applied out-of-state is whether the constitutional goals will be compromised.⁷⁷ The court reasoned that the essential objective is the deterrence of unlawful police conduct.⁷⁸

In *State v. Davis*,⁷⁹ the defendant, charged with murder in Oregon, was arrested in his mother's home in Mississippi by Mississippi police officers. The Mississippi police had a fugitive warrant, based on underlying arrest warrants, but not a search warrant.⁸⁰ After his arrest, the defendant was questioned in Mississippi by Oregon police. The Supreme Court of Oregon considered the defunct "silver platter doctrine," abolished by the United States Supreme Court in 1960,⁸¹ which allowed evidence admitted in federal courts obtained by state police in violation of the Fourth Amendment if federal officers had carried out the search.⁸² However, the doctrine is no longer a valid policy. The Oregon court held that with regard to an out-of-state search and seizure involving an Oregon defendant, the search and seizure, whether executed by Oregon police or the forum state police, must comply with the Oregon Constitution to be admissible in an

⁷² *Id.* at 412.

⁷³ *Id.* at 416.

⁷⁴ *Id.* at 412.

⁷⁵ *Id.*

⁷⁶ *Cauley*, 863 S.W.2d at 412.

⁷⁷ *Id.* at 415.

⁷⁸ *Id.*

⁷⁹ 834 P.2d 1008 (Or. 1992).

⁸⁰ *Id.* at 1009.

⁸¹ *Id.* at 1011.

⁸² *Id.*

Oregon court.⁸³ However, in *Davis*, the court held the defendant's rights were not violated by the arrest without a search warrant "because the officers were executing a valid arrest warrant."⁸⁴

Basing its decision on the foregoing case law, as well as the language of Article 1, Section 6 of the New York Constitution, and the Privileges and Immunities Clause of the United States Constitution, the *Nieto* court held that affording greater rights to a New York citizen than to an out-of-state citizen would violate the Privileges and Immunities Clause of the United States Constitution.⁸⁵ Furthermore, if the New York Constitution, Article I, Section 6 were not given an extra-territorial effect, that would allow New York police to obtain evidence outside the State of New York with wanton disregard, and such evidence would be admissible at trial.⁸⁶ The court also reasoned that such latitude in police behavior could result in "the ultimate constitutional violation, that of Article I, Section 6 of the New York State Constitution, the defendant's right to counsel and a fair trial."⁸⁷

The United States Supreme Court's interpretation of the Federal Search and Seizure Clause protections of the Fourth Amendment regarding extra-territorial defendants is different than the decision of the New York Supreme Court.⁸⁸ The Fourth Amendment of the United States Constitution does not apply to non-citizen United States defendants outside the borders of the United States.⁸⁹ Therefore, evidence obtained outside United States' borders can be admitted and used against the defendant at trial, regardless of the manner in which it was obtained.⁹⁰

The New York court held that all New York defendants, whether citizens of the state or not, will be protected from unreasonable searches and seizures under the New York State Constitution.⁹¹ This is true whether the search occurs within New

⁸³ *Id.*

⁸⁴ *Davis*, 834 P.2d. at 1010.

⁸⁵ *Nieto*, 746 N.Y.S. 2d at 377-78, 192 Misc. 2d at 545.

⁸⁶ *Id.*

⁸⁷ *Id.* at 378, 192 Misc. 2d at 545.

⁸⁸ See *Verdugo-Urquidez*, 484 U.S. at 259; *Nieto*, 746 N.Y.S.2d at 371.

⁸⁹ *Verdugo-Urquidez*, 484 U.S. at 265.

⁹⁰ *Id.*

⁹¹ *Nieto*, 746 N.Y.S.2d at 378, 192 Misc. 2d at 546.

York or outside New York's borders.⁹² A New York defendant can be assured that evidence obtained unreasonably, without a warrant, whether within New York state or outside its borders, will not be used against him or her at a New York trial.⁹³ Although a non-New York citizen is an alien of New York State, the non-New York citizen is a United States citizen, entitled to all protections afforded by the Federal Constitution.⁹⁴

Jean D'Alessandro

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 377-78, 192 Misc. 2d at 545.