



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

**Touro Law Review**

---

Volume 14 | Number 3

Article 52

---

1998

## Search and Seizure, Court of Appeals: People v. Funches

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



Part of the [Constitutional Law Commons](#), [Criminal Procedure Commons](#), [Fourth Amendment Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

(1998) "Search and Seizure, Court of Appeals: People v. Funches," *Touro Law Review*: Vol. 14: No. 3, Article 52.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol14/iss3/52>

This New York State Constitutional Decisions 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](mailto:lross@tourolaw.edu).

N.Y. CONST. art. I, § 12:

*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 supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

U.S. CONST. amend. IV:

*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 supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

## COURT OF APPEALS

People v. Funches<sup>1</sup>  
(decided March 27, 1997)

Defendant, Trevis Funches, also known as, Eric Williams, was convicted, after a jury trial in the Supreme Court, New York County, of criminal possession of a controlled substance in the second and third degree, and criminally using drug paraphernalia in the second degree.<sup>2</sup> Defendant was sentenced, as a second

---

<sup>1</sup> 89 N.Y.2d 1005, 679 N.E.2d 635, 657 N.Y.S.2d 396 (1997).

<sup>2</sup> People v. Funches, 222 A.D.2d 218, 219, 635 N.Y.S.2d 7 (1st Dep't 1995). The New York statute for criminal possession of a controlled substance in the second degree is embodied in New York Penal Law § 220.18. N.Y. PENAL LAW § 220.18 (McKinney 1989). The New York statute for criminal possession of a controlled substance in the third degree is embodied in New York State Penal Law § 220.39. N.Y. PENAL LAW § 220.39 (McKinney

felony offender, to concurrent terms of six years to life for the criminal possession of a controlled substance in the second degree, four and one-half years to nine years for the criminal possession of a controlled substance in the third degree, and one year for criminally using drug paraphernalia in the second degree.<sup>3</sup>

Defendant appealed to the Appellate Division, First Department, on the grounds that his right to be free from illegal search and seizure under the United States Constitution<sup>4</sup> was violated when the trial court refused to suppress physical evidence recovered during a warrantless search of his apartment.<sup>5</sup> The Appellate Division, First Department, affirmed the convictions holding that the police had reasonable suspicion to investigate the fire escape, officers' descent from the third to the second level on the fire escape was lawful, defendant enjoyed only a minimal expectation of privacy in fire escape outside his window,<sup>6</sup> and "officers' plain view observation of the contraband a few feet inside of the window provided the predicate for the warrantless entry of the apartment."<sup>7</sup> On appeal, the New York State Court of Appeals affirmed the Appellate Division.<sup>8</sup>

---

1989). The New York statute for criminally using drug paraphernalia in the second degree is embodied in the New York Penal Law § 220.50. N.Y. PENAL LAW § 220.50 (McKinney 1989).

<sup>3</sup> *Funches*, 222 A.D.2d at 218, 635 N.Y.S.2d at 7.

<sup>4</sup> U.S. CONST. amend. IV. The Fourth Amendment in pertinent part provides: "[T]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ." *Id.* See also N.Y. CONST. art. I, § 12. This section prohibits unreasonable searches and seizures and states in pertinent part: "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but upon reasonable cause . . . ." *Id.*

<sup>5</sup> *Funches*, 222 A.D.2d at 218, 635 N.Y.S.2d at 7.

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

<sup>7</sup> *Id.* at 219, 635 N.Y.S.2d at 8.

<sup>8</sup> *People v. Funches*, 89 N.Y.2d 1005, 679 N.E.2d 635, 657 N.Y.S.2d 396 (1997).

On March 25, 1990, Police Officer Calderin, while on patrol, received a radio transmission “[t]hat two males were involved in a dispute possibly about drugs, in a second floor apartment at 174 West 141<sup>st</sup> Street in Manhattan.”<sup>9</sup> Upon Calderin’s arrival at the location, the defendant, whom the officer “recognized as a resident” of the building, was observed climbing onto a fire escape through a second floor window.<sup>10</sup> Calderin heard a sound similar to a “metallic object hitting the fire escape” immediately prior to the defendant beginning to climb upward.<sup>11</sup> Calderin advised other officers of his observation and received permission from a tenant, in an apartment directly “above the window from which the defendant emerged,” to access the fire escape through this third floor tenant’s window.<sup>12</sup> Calderin then climbed through the window onto the fire escape and descended to the second floor fire escape landing where he found a loaded .22 caliber handgun outside the window of the second floor apartment.<sup>13</sup> Calderin then looked through the uncurtained window and spotted cocaine, empty vials and two scales in plain view.<sup>14</sup> Calderin and another police officer climbed into the apartment through the open window to “[s]earch for armed individuals since at least two disputants had been reported.”<sup>15</sup> The officers found the television and videocassette recorder playing which signaled that there were potential occupants in the apartment.<sup>16</sup> Calderin observed photographs of the defendant and his girlfriend taped on a mirror.<sup>17</sup> Officer Calderin seized the drug paraphernalia, contraband and photographs as evidence.<sup>18</sup>

---

<sup>9</sup> *Id.* at 1005, 679 N.E.2d at 636, 657 N.Y.S.2d at 397.

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

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

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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

The United States Supreme Court in *Jones v. United States*<sup>19</sup> discussed the privacy interests protected by the Fourth Amendment stating “[i]t is entirely proper to require of one who seeks to challenge the legality of a search . . . that he . . . establish, that he . . . was the victim of an invasion of privacy.”<sup>20</sup> The New York State Court of Appeals relied on *People v. Rodriguez*<sup>21</sup> which asserted that

[i]n considering whether a defendant may claim a privacy interest, a court must determine whether a claim of privacy “is reasonable in light of all surrounding circumstances” . . . [a]mong factors to be considered are whether the individual took precautions to maintain privacy, [and] the manner in which the individual used the premises . . . .<sup>22</sup>

The court examined the totality of the circumstances in establishing that Officer Calderin had reasonable suspicion to investigate the fire escape<sup>23</sup> and found compelling that “[u]pon hearing a radio report of a dispute between two men, possibly over drugs . . . [the officer] observed the defendant exit his apartment through a window, flee up the fire escape, and heard a metallic thud of an object falling to the fire escape landing.”<sup>24</sup> The court, in establishing that no violation of the Fourth Amendment had occurred, asserted that the fire escape was “[a]n open area, subject to common use of the tenants in the building”

---

<sup>19</sup> 362 U.S. 257 (1960) (holding that defendant, having been arrested while in the apartment of a friend, has standing to move for suppression of narcotics seized by federal officers executing a search warrant).

<sup>20</sup> *Id.* at 261.

<sup>21</sup> 69 N.Y.2d 159, 505 N.E.2d 586, 513 N.Y.S.2d 75 (1987) (holding defendant, while alone in an apartment, not his own, had no reasonable or constitutionally recognized expectation of privacy and no standing to seek suppression of narcotics seized during an initial warrantless search).

<sup>22</sup> *Id.* at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77 (citing *Rakas v. Illinois*, 439 U.S. 128, 152-53(1978) (Powell, J., concurring opinion)).

<sup>23</sup> *People v. Funches*, 89 N.Y.2d 1005, 1007, 679 N.E.2d 635, 636, 657 N.Y.S.2d 396, 397 (1997).

<sup>24</sup> *Id.*

and defendant had a diminished expectation of privacy in this area.<sup>25</sup>

The court further held that the officer, being lawfully on the fire escape, had “[p]robable cause to enter the apartment once he discovered a loaded handgun on the fire escape and observed in plain view what appeared to be contraband and drug paraphernalia.”<sup>26</sup> Additionally, the court found that due to a potential threat of harm to the investigating police at the location, given the radio report of two men having a dispute and the discovery of the gun, exigent circumstances existed.<sup>27</sup>

While both the federal law and the state law in regard to the prohibition of unreasonable search and seizure have similar statutory language, New York courts will look at the totality of the circumstances to determine if a police officer had the necessary reasonable suspicion and whether the defendant lacked an expectation of privacy, in order to justify a warrantless search.<sup>28</sup>

People v. Turriago<sup>29</sup>  
(decided May 13, 1997)

Defendant, Leonard Turriago, was convicted in the Supreme Court, New York County of various criminal charges.<sup>30</sup> On

---

<sup>25</sup> *Id.* (citing *People v. Rodriguez*, 69 N.Y.2d 159, 505 N.E.2d 586, 513 N.Y.S.2d 75 (1987) (asserting that the defendant must show he was a victim of an invasion of privacy to establish the illegality of a warrantless search and seizure); *United States v. Arboleda*, 633 F.2d 985 (2d Cir. 1980) (holding no constitutional violation occurred when a police detective broke into an apartment through a window after the defendant threw a package of cocaine onto the fire escape)).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1007, 679 N.E.2d at 637, 657 N.Y.S.2d at 398.

<sup>28</sup> *Id.* at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77 (citing *Rakas v. Illinois*, 439 U.S. 128, 152-53 (1978) (Powell, J., concurring)).

<sup>29</sup> 90 N.Y.2d 77, 681 N.E.2d 350, 659 N.Y.S.2d 183 (1997).