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Search and Seizure, Court of Appeals: People v. Turriago

and defendant had a diminished expectation of privacy in this area.[25]

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."[26] 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.[27]

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.[28]

People v. Turriago[29]
(decided May 13, 1997)

Defendant, Leonard Turriago, was convicted in the Supreme Court, New York County of various criminal charges.[30] On

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[25] *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)).

[26] *Id.*

[27] *Id.* at 1007, 679 N.E.2d at 637, 657 N.Y.S.2d at 398.

[28] *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)).

[29] 90 N.Y.2d 77, 681 N.E.2d 350, 659 N.Y.S.2d 183 (1997).

appeal to the Appellate Division, defendant's convictions were reversed on his motion to suppress physical evidence and his incriminating statements.[31] The People appealed the intermediate court decision on grounds that the defendant's constitutional rights were not violated pursuant to the United States Constitution[32] and the New York State Constitution.[33]

On appeal, the State made two arguments: (1)"the requirement of a founded suspicion of criminal activity does not apply when the police seek consent to search a vehicle following a stop"[34] and (2)the inevitable discovery doctrine should have been applied to deny the defendant's suppression motion.[35] The Appellate Division held that the police did not conduct the search of the defendant's vehicle.[36] Conflicting testimony was introduced regarding whether the state troopers requested consent to search the vehicle or whether coercive tactics were employed to gain access to the vehicle revealing the body of a deceased victim.[37] Under these circumstances, the First Department found that consent was not given by the defendant which resulted in an abridgment of his rights to be protected from illegal searches and seizures.[38] The Court of Appeals held that the Appellate Division erred in not applying the inevitable discovery doctrine to the

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[30] *Turriago*, 90 N.Y.2d at 80, 681 N.E.2d at 351, 659 N.Y.S.2d at 184 (1997) "[Defendant was convicted] of murder in the second degree, of weapons and cocaine possession and tampering with physical evidence." *Id.*

[31] *Id.* at 80, 681 N.E.2d at 351, 659 N.Y.S.2d at 184.

[32] U.S. CONST. amend. IV. The Fourth Amendment provides 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 . . . ." *Id.*

[33] N.Y. CONST. art. I, § 12. This section provides 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 . . . ." *Id.*

[34] *Turriago,* 90 N.Y.2d at 80, 681 N.E.2d at 351, 659 N.Y.S.2d at 184. This argument was not preserved by the State during the trial and the court concluded that the issue was "beyond the jurisdiction of [the] court." *Id.*

[35] *Id.* at 80, 681 N.E.2d at 351, 659 N.Y.S.2d at 184.

[36] *Id.*

[37] *Id.* at 81-82, 681 N.E.2d at 352, 659 N.Y.S.2d at 185.

[38] *Id.* at 83, 681 N.E.2d at 353, 659 N.Y.S.2d at 186.

secondary evidence which resulted from an apartment search after taking defendant into custody.[39] It is recognized that the inevitable discovery exception to the exclusionary rule can apply to permit the use of secondary evidence received from primary evidence obtained illegally.[40]

On November 20, 1990 at 2:00 in the morning the defendant was stopped by State Police in upstate New York for a speeding violation.[41] According to the police, a consent search was requested because the hunting season began and they were concerned about unlicensed hunters carrying loaded weapons in their vehicles to hunt deer at night.[42] The search revealed the corpse of Fernando Cuervo lodged in the trunk.[43] At this time, the defendant fled, but was later apprehended along with the other occupants in the van.[44] Traffic tickets were issued for speeding and a check on the status of the operator's license was conducted.[45] It was found that the operator's license was suspended and another summons was issued for violation of the vehicle and traffic law.[46] The police used information gathered from the defendant and his companions to obtain search warrants to enter the defendant's apartment.[47] Accordingly, the same information was used to retrieve the gun used by the killer which was discarded in the Hudson River prior to the trip upstate.[48] The police seized evidence of the murder; firearms and a large quantity of cocaine were retrieved from Turriago's apartment.[49] The People urged the Court of Appeals to find that the consent to search the vehicle was not coerced and that, if it was coerced,

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[39] *Id.* at 88, 681 N.E.2d at 356, 659 N.Y.S.2d at 189.

[40] *Id.* at 86, 681 N.E.2d at 355, 659 N.Y.S.2d at 188 (citing People v. Stith, 69 N.Y.2d 313, 506 N.E.2d 911, 514 N.Y.S.2d 201 (1987)).

[41] *Turriago*, 90 N.Y.2d at 81, 681 N.E.2d at 352, 659 N.Y.S.2d at 185.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 82, 681 N.E.2d at 352, 659 N.Y.S.2d at 185.

[48] *Id.*

[49] *Id.*

"the People's evidence was admissible under the inevitable discovery doctrine."[50]

The *Turriago* court indicated that in *People v. Fitzpatrick,* it recognized the inevitable discovery exception to the exclusion of evidence "tainted by illegal police procedures . . . ."[51] In *Fitzpatrick*, the defendant was accused of holding up an attendant at a gas station where he was stopped by two officers.[52] Mr. Fitzpatrick proceeded to shoot both officers and fled the crime scene.[53] One of the officers was able to radio in to inform others that he had been shot by the defendant.[54] Police gained information regarding the address of the defendant and entered his home without a warrant where officers found defendant hiding in a closet.[55] The officers questioned the defendant about the gun and he admitted that it was on the shelf in the closet.[56] The court reasoned in *Fitzpatrick* that the inevitable discovery factor should be invoked because the police naturally would have looked for incriminating evidence in the closet where the defendant was hiding.[57] Further analysis suggests that there was no need for a search or arrest warrant because probable cause existed.[58]

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[50] *Id.* at 82, 681 N.E.2d at 353, 659 N.Y.S.2d at 186. The inevitable discovery rule is an exception to the exclusionary rule which permits evidence to be admitted in a criminal case, even though it was obtained unlawfully, when the government can show that discovery of the evidence by lawful means was inevitable. BLACK'S LAW DICTIONARY 777 (6th ed. 1990).

[51] *Turriago,* 90 N.Y.2d at 84, 681 N.E.2d at 354, 659 N.Y.S.2d at 187 (citing People v. Fitzpatrick, 32 N.Y.2d 499, 300 N.E.2d 139, 346 N.Y.S.2d 793 (1973)).

[52] *Fitzpatrick*, 32 N.Y.2d at 503, 300 N.E.2d at 140, 346 N.Y.S.2d at 794.

[53] *Id.*

[54] *Id.*

[55] *Id.* at 504, 300 N.E.2d at 140, 346 N.Y.S.2d at 795.

[56] *Id.*

[57] *Id.* at 507, 300 N.E.2d at 142, 346 N.Y.S.2d at 797. The court stated that the next most reasonable place for the police to search would have been the closet. *Id.*

[58] *Id.* at 509, 300 N.E.2d at 143, 346 N.Y.S.2d at 799. In the interest of protecting lives, "[t]he Fourth Amendment does not require police officers to

The People contest the decision of the Appellate Division in *Turriago* by requesting that an exception to the exclusionary rule be applied to warrant the use of secondary evidence for evidentiary purposes.[59] Secondary evidence may be admitted under the exception even though it has been obtained from "tainted primary evidence."[60] In *People v. Stith*,[61] the police arrested and charged the defendant with criminal possession of a weapon when police discovered a gun in an unlawful search of the cab of the defendant's truck tractor.[62] Upon retrieval of the revolver, the police performed a radio check where they found that the defendant's license was expired and the truck was stolen.[63] The court reversed defendant's conviction of criminal possession of the weapon because the illegal search contravened constitutional and state law.[64] Yet, the court considered the fact that the truck was stolen to be grounds for a legitimate conviction because such evidence is construed to be admissible secondary evidence.[65] Following the reasoning in *Stith*, the *Turriago* court allowed the evidence regarding the apartment to be admitted as secondary evidence where the primary evidence of the body should be inadmissible.[66]

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delay in the course of an investigation." *Id.* (citing Warden v. Hayden, 387 U.S. 294 (1966)).

[59] People v. Turriago, 90 N.Y.2d 77, 82, 681 N.E.2d 350, 353, 659 N.Y.S.2d 183, 186 (1997).

[60] *Id.* at 86, 681 N.E.2d at 355, 659 N.Y.S.2d at 188.

[61] 69 N.Y.2d 313, 506 N.E.2d 911, 514 N.Y.S.2d 201 203 (1987).

[62] *Id.* at 317, 506 N.E.2d at 913, 514 N.Y.S.2d at 203.

[63] *Id.*

[64] *Id.* at 318, 506 N.E.2d at 914, 514 N.Y.S.2d at 204. The court will apply the inevitable discovery rule to secondary evidence. "[E]vidence illegally obtained during or as the immediate consequence of [improper] police conduct [will be excluded, while] evidence obtained indirectly as a result of leads or information gained from that primary evidence [will be admissible]." *Id.*

[65] *Id.* at 316, 506 N.E.2d at 912, 514 N.Y.S.2d at 202. The Court of Appeals modified the Appellate Division on the grounds that only the conviction for stolen property should be maintained. *Id.*

[66] People v. Turriago, 90 N.Y.2d 77, 88, 681 N.E.2d 350, 356, 659 N.Y.S.2d 183, 189 (1997). The Court of Appeals relied upon the *Stith*

In *New York v. Payton*[67], the New York Court of Appeals expanded the scope of the word "inevitable" as it applies in the inevitable discovery doctrine.[68] The court suggested that a "very high degree of probability" is required to allow evidence to be admissible if such evidence may be obtained "independently of the tainted source."[69] Similar to *Fitzpatrick*[70] and *Stith*,[71] a warrantless entry by the police was conducted in *Payton*.[72] The Court of Appeals held that a warrantless entry made to effect a felony arrest, if based on probable cause, is not violative of a defendant's constitutional right to be secure against unreasonable searches and seizures.[73] However, on appeal, the Supreme Court of the United States overruled New York's position regarding interpretation of the Fourth Amendment.[74]

In *Payton,* Justice Wachtler dissenting explaining that the inevitable discovery doctrine should not apply because the police would not discover the location of the gun dealer under normal police procedures.[75] According to *Fitzpatrick*, the inevitability of discovering evidence subsequent to an illegal search is determined

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decision to the extent that it would not preclude secondary evidence under the inevitable discovery exception to the exclusionary rule. *Id.*

[67] *Payton*, 45 N.Y.2d 300, 380 N.E.2d 224, 408 N.Y.S.2d 402, *rev'd* 445 U.S. 573 (1980).

[68] *Payton*, 45 N.Y.2d at 313, 380 N.E.2d at 231, 408 N.Y.S.2d at 402. The court indicated that the term "inevitable discovery" is inaccurate and "[w]hat is required is that there be a very high degree of probability that the evidence in question would have been obtained independently of the tainted source." *Id.*

[69] *Id.*

[70] 32 N.Y.2d 499, 300 N.E.2d 139, 346 N.Y.S.2d 793 (1973).

[71] 69 N.Y.2d 313, 506 N.E.2d 911, 514 N.Y.S.2d 201 203 (1987).

[72] *Id.*

[73] 45 N.Y.2d at 305, 380 N.E.2d at 225, 408 N.Y.S.2d at 396, *rev'd* 445 U.S. 573 (1980).

[74] *See* Payton v. New York, 45 U.S. 573 (1980).

[75] *Payton*, 45 N.Y.2d at 316, 380 N.E.2d at 232, 408 N.Y.S.2d at 403, *rev'd* 445 U.S. 573 (1980) (Wachtler, J., dissenting).

by looking in "the next most reasonable place."[76] Justice Wachtler emphasized that there were hundreds of reasonable places to look for the dealer who sold the murder weapon in *Payton*.[77]

The Court noted in *Payton* that the exclusionary rule is designed to "ensure[] that the prosecution is not put in a worse position simply because of some earlier police error or misconduct."[78] The Supreme Court disfavors unreasonable searches or seizures conducted without a warrant.[79] Moreover, the Court draws no distinction between the seizure of persons or property; the constitutional protection afforded to both categories are the same.[80] It is worthy to note that the New York Court of Appeals has upheld warrantless entries to arrest persons although countered by a constitutional attack.[81]

There exists a dissimilarity between the application of the search and seizure doctrine as it is delineated in the federal and New York State courts. *Turriago* relied upon state precedent as it related to the question of whether primary or secondary evidence would be admissible having been elicited from prior police misconduct.[82] In *Turriago,* the prosecution did not meet the necessary burden to demonstrate that the primary evidence would have naturally been discovered, but it had the opportunity to

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[76] *Id.* at 317, 380 N.E.2d at 233, 408 N.Y.S.2d at 404 (Wachler, J., dissenting).

[77] *Id.* (Wachler, J., dissenting).

[78] People v. Turriago, 90 N.Y.2d 77, 85, 681 N.E.2d 350, 353, 659 N.Y.S.2d 183, 186 (1997).

[79] *Payton,* 445 U.S. 573. "Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the [Fourth] Amendment." *Id.* "[A]bsent exigent circumstances . . . [t]he suspect's interest in the sanctity of his home . . . outweighs the governmental interests." *Id.* at 603 (Blackmun, J., concurring).

[80] *Id.* at 585. "[A]n entry to arrest and an entry to search for and to seize property implicate the same interest in preserving the privacy and the sanctity of the home, and justify the same level of constitutional protection." *Id.* at 588.

[81] *Id.* at 600.

[82] *See Turriago*, 90 N.Y.2d at 77, 681 N.E.2d at 350, 659 N.Y.S.2d at 183.

prove that the secondary evidence should have been admitted.[83] As long as New York allows police to conduct warrantless searches and seizures, a New York court must demonstrate that its decision is based solely on a state constitutional provision to be immune from review by the Supreme Court.[84]

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

People v. LaFontaine[85]
(decided November 6, 1997)

Defendant, Sixto LaFontaine, was indicted for criminal possession of a controlled substance in the third degree.[86] The defendant moved to suppress the evidence[87] seized by New Jersey police officers arguing that the officers lacked authority to make the arrest.[88] Moreover, defendant claimed that his arrest violated

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[83] *Id.* at 88, 681 N.E.2d. at 356, 659 N.Y.S.2d at 189. "[B]y invoking a state constitutional provision, a state court immunizes its decision from review by this Court." *Id.*

[84] *Payton*, 445 U.S. at 600."

[85] 235 A.D.2d 93, 664 N.Y.S.2d 587 (1st Dep't), *appeal granted*, 91 N.Y.2d 883, 691 N.E.2d 654, 668 N.Y.S.2d 582 (1997).

[86] *Id.* at 95, 664 N.Y.S.2d at 589.

[87] *See* N.Y. CRIM. PROC. LAW § 710.20 (McKinney 1997). This section provides in pertinent part:

> Upon motion of a defendant who (a) 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, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it: (1) Consists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant.

Id.

[88] *LaFontaine*, 235 A.D.2d at 95, 664 N.Y.S.2d at 589.