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Search and Seizure, Supreme Court, Appellate Division, First Department: People v. LaFontaine

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.

his right to be free from unreasonable searches and seizures as guaranteed under the United States Constitution[89] and the New York State Constitution.[90] The Appellate Division, First Department affirmed the decision of the lower court and held that the only violation committed was statutory and not constitutional; therefore, suppression of the evidence was not mandated and the search and seizure was lawful.[91]

Defendant, Sixto LaFontaine, and Miguel Ortiz were wanted for the crimes of conspiracy to commit murder[92] and aggravated assault[93] in the State of New Jersey.[94] Additionally, defendant

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

[90] *LaFontaine*, 235 A.D.2d at 95, 664 N.Y.S.2d at 589. *See* N.Y. CONST. art. I, §12. This section 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 . . . ." *Id.*

[91] *LaFontaine*, 235 A.D.2d at 100, 664 N.Y.S.2d at 592-93.

[92] *Id.* at 94, 664 N.Y.S.2d at 589. *See* N.J. STAT. ANN. § 2C:5-2 (West 1997). This section provides in pertinent part:

> A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

Id. Conspiracy to commit murder is a crime of the second degree that may be punishable by a prison term of five to ten years. N.J. STAT. ANN. § 2C:43-6 (West 1997).

[93] *See* N.J. STAT. ANN. § 2C:12-1(b)(1) (West 1997). This section provides in pertinent part: "A person is guilty of aggravated assault if he: (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury." *Id.* Aggravated assault is a crime of the second degree and one who is convicted of this crime can be faced with the same sentencing exposure as one who is convicted for

was sought by the New Jersey Federal District Court for the federal offense of flight to avoid prosecution.[95] A New Jersey warrant was issued by the Municipal Court of Patterson, New Jersey and a federal warrant was issued by the New Jersey Federal District Court.[96] On November 18, 1992, four New Jersey Police officers went to the 34th precinct in New York City to execute the arrest warrants.[97] Four New York police detectives joined the New Jersey officers in an unsuccessful search for the suspects.[98] Thereafter, the New Jersey officers continued the search on their own.[99] During their search, the police officers were led by an informant to an apartment located at 600 West 163rd Street.[100] Two of the New Jersey police officers went to the door, one officer waited in the hall and the other officer waited on the fire escape landing.[101] The two officers knocked on the door and identified themselves as the

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conspiracy to commit murder. N.J. STAT. ANN. § 2C:43-6 (a)(2) (West 1997).

[94] *LaFontaine*, 235 A.D.2d at 94, 664 N.Y.S.2d at 589.

[95] *Id. See* 18 U.S.C. § 1073 (1997). This section provides in pertinent part:

> Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of such place from which the fugitive flees . . . shall be fined [under this title] or imprisoned not more than five years, or both.

Id.

[96] *LaFontaine*, 235 A.D.2d at 94, 664 N.Y.S.2d at 589.

[97] *Id.* The New Jersey police officers advised the precinct detectives that they had information that the defendant and Miguel Ortiz had been seen within the boundaries of the 34th precinct, in the vicinity of 158th Street between Amsterdam Avenue and Broadway. *Id.* at 101, 664 N.Y.S.2d at 593 (Tom, J., dissenting).

[98] *Id.* (Tom, J., dissenting).

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

[100] *Id.*

[101] *Id.*

police.[102] At first, the officers heard "shuffling" sounds inside the apartment; they then heard the other officers each yell "halt."[103] The defendant was apprehended on the fire escape.[104] The officers escorted the defendant back into his kitchen where they observed and eventually seized plastic bags of cocaine which were clearly visible on top of the refrigerator.[105] The defendant and the narcotics were turned over to the New York police officers at the 34th Precinct.[106] Ultimately, defendant was indicted by a New York grand jury for criminal possession of a controlled substance in the third degree[107] and of criminal use of drug paraphernalia in the second degree.[108]

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[102] *Id.*

[103] *Id.* Defendant, shirtless, was exiting through a window onto the fire escape where he was apprehended by one of the police officers. *Id.*

[104] *Id.*

[105] *Id.* The officers heard a child crying in the apartment and returned to the apartment with the defendant to see if the child was properly attended to. *Id.*

[106] *Id.* at 102, 664 N.Y.S.2d at 593 (Tom. J., dissenting). The New Jersey officers searched the defendant's apartment for Miguel Ortiz, however, they were unable to locate him therein. *Id.* (Tom. J., dissenting). *See* People v. LaFontaine, 159 Misc. 2d 751, 755, 603 N.Y.S.2d 660, 663 (Sup. Ct. New York County 1993).

[107] *See* N.Y. PENAL LAW § 220.16(1) (McKinney 1997). This section provides in pertinent part: "A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses . . . a narcotic drug with intent to sell it." *Id. See also* N.Y. PENAL LAW § 220.16(12) (McKinney 1997). This section provides in pertinent part: "A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses . . . one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations . . . are of an aggregate weight of one-half ounce or more." *Id.*

[108] *LaFontaine*, 159 Misc. 2d at 755, 603 N.Y.S.2d at 663. *See* N.Y. PENAL LAW § 220.50 (McKinney 1997). This section provides in pertinent part:

> A person is guilty of criminally using drug paraphernalia in the second degree when he knowingly possesses or sells . . . [d]iluents, dilutants or adulterants . . . or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants under circumstances evincing an intent to

Defendant moved in Supreme Court, New York County, to suppress the physical evidence recovered by the New Jersey police officers.[109] He claimed that he had been unlawfully arrested in New York City by New Jersey police officers who did not have any authority beyond the New Jersey territorial limits to make arrests in the State of New York.[110] Moreover, he argued that the seizure of the narcotics by the New Jersey police officers was illegal and that such evidence should be excluded from his trial.[111] Conversely, the People averred that as private citizens, the police officers were entitled to arrest the defendant.[112] Additionally, the People argued that the police officers were acting as agents of the New York City Police Department triggering application of the Fourth Amendment "state action"

> use, or under circumstances evincing knowledge that some person intends to use, the same for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant.

Id.

[109] *LaFontaine*, 159 Misc. 2d at 753, 603 N.Y.S.2d at 662.

[110] *Id.*

[111] *Id.*

[112] *Id.* *See* N.Y. CRIM. PROC. LAW § 140.30 (McKinney 1997). This section provides:

> 1. Subject to the provisions of subdivision two, any person may arrest another person (a) for a felony when the latter has in fact committed such felony, and (b) for any offense when the latter has in fact committed such offense in his presence. 2. Such an arrest, if for a felony, may be made anywhere in the state. If the arrest is for an offense other than a felony, it may be only in the county in which such offense is committed.

Id.

principle.[113] Finally, the People claimed that the seizure of the narcotics was justified pursuant to the "plain view" doctrine.[114]

The Supreme Court, New York County, denied defendant's motion and held that although the New Jersey officers had the power to make citizen arrests in New York State,[115] "they did not do so here because they had invoked their official authority in

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[113] *LaFontaine,* 159 Misc. 2d at 756, 603 N.Y.S.2d at 664. *See* People v. Esposito, 37 N.Y.2d 156, 332 N.E.2d 863, 371 N.Y.S.2d 681 (1975) (holding that action of private individuals become subject of scrutiny for constitutional violations when those individuals act as agent's of the government or when government officials participate in those actions).

[114] *LaFontaine*, 159 Misc. 2d at 753, 603 N.Y.S.2d at 662. *See* Coolidge v. New Hampshire, 403 U.S. 443 (1971). The plain view doctrine is an exception that permits the warrantless seizure of evidence when three conditions are met. *Id.* at 465. Police may under certain circumstances seize evidence in plain view without a warrant. *Id.* First, the officer must have a prior justification for the intrusion that allowed him to view plainly the evidence. *Id.* at 466. Second, the discovery of the evidence must be inadvertent. *Id.* at 469. Third, it must be "immediately apparent to the police that they have [incriminating] evidence before them." *Id.* at 466. *See also* Minnesota v. Dickerson, 113 S. Ct. 2130 (1993) (permitting the warrantless seizure of objects viewed in plain sight when the incriminating character of the object is immediately apparent and the authorities are lawfully situated to both make the viewing and access the object); People v. Diaz, 81 N.Y.2d 106, 109, 612 N.E.2d 298, 300, 595 N.Y.S.2d 940, 942 (1993) (stating that "[i]t is fundamental that warrantless searches and seizures are per se unreasonable unless they fall into one of the acknowledged exceptions to the Fourth Amendment's warrant requirement.").

[115] *LaFontaine*, 159 Misc. 2d at 758, 603 N.Y.S.2d at 665. The court held that "any police officer from a foreign state, who is not in close pursuit of a suspect and who effects an extraterritorial arrest of that suspect in New York State, is a private citizen for the purposes of Fourth Amendment analysis." *Id.* Moreover, the court determined that the New Jersey police officers were not acting as agents of New York State under the Fourth Amendment reasoning that the "New York City police officers did not participate in the defendant's arrest and the acquisition of the contraband, nor were they even in the defendant's apartment during the defendant's arrest and the search for and seizure of the alleged narcotics." *Id.* at 758-59, 603 N.Y.S.2d at 665. Accordingly, the court held that there was no state action under the Fourth Amendment since the New York State police officers did not participate in the apprehension of the defendant and acquisition of the narcotics. *Id.* at 759, 603 N.Y.S.2d at 666 (citations omitted).

coercing defendant from his home and arresting him."[116] Accordingly, the New Jersey police officers conduct triggered application of the Fourth Amendment.[117] Based upon the principles enunciated in *Payton v. New York*,[118] the *LaFontaine* lower court determined that the Fourth Amendment's prohibition against police officers making warrantless and non-consensual entry into a home to affect an arrest and search the premises was violated if the New Jersey police officers entered the defendant's home and seized the narcotics without a warrant.[119] Since defendant did not consent to the New Jersey police officer's entry into his home, "only an arrest pursuant to a warrant validates the defendant's seizure."[120] Therefore, the court determined that the New Jersey warrant was invalid because it had no effect outside of New Jersey's borders.[121] However, the court found that the federal warrant served to validate the arrest of the defendant since the type of federal warrant issued in this case may be executed

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[116] *LaFontaine*, 235 A.D.2d at 95, 664 N.Y.S.2d at 589. The court applied the "under color of authority" principle to determine that the New Jersey police officers, acting as police officers, not private citizens, exerted the powers of their office by announcing that they were the police before entering defendant's home, explaining to the defendant that they had a warrant for his arrest, and administering Miranda warnings to him. *LaFontaine*, 159 Misc. 2d at 762, 603 N.Y.S.2d at 668.

[117] *Id.*

[118] 445 U.S. 573 (1980). In *Payton*, police officers, acting on probable cause that the defendant murdered a manager of a gas station, entered the defendant's home forcibly without an warrant and seized a .30 caliber shell casing which the prosecution sought to introduce at trial. *Id.* at 576-77. The Court deemed the arrest of the defendant to be in violation of the defendant's constitutional rights. *Id.* at 602-03. Consequently, the Supreme Court found the New York statute authorizing police officers to enter a suspect's home in order to procure an arrest, to be inconsistent with the Fourth Amendment and thus, unconstitutional. *Id.* at 576. The Court held "that the Fourth Amendment . . . prohibits the police from making a warrantless and non-consensual entry into a suspect's home in order to make a routine felony arrest." *Id.*

[119] *LaFontaine*, 159 Misc. 2d at 763, 603 N.Y.S.2d at 668.

[120] *Id.*

[121] *Id.*

anywhere in the United States.[122] The court further held that the evidence seized by the police officers was obtained pursuant to the "in plain view" doctrine and properly seized without a warrant.[123]

The Appellate Division, First Department, began its analysis by stating that the police officers could not execute the New Jersey arrest warrant in New York State.[124] In reaching this conclusion, the court reasoned that police officers do not have the power to arrest individuals outside of their geographical jurisdiction.[125] Likewise, an arrest warrant issued from one state has no validity outside that state and cannot as such be executed in another state.[126] However, under well established federal and state principles of law, a police officer acting outside his jurisdiction has the power to make a lawful citizen's arrest.[127] Hence, the

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[122] *Id.* at 764, 603 N.Y.S.2d at 668. *See* FED. R. CRIM. P. 4(d)(2). This section provides: "The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States." *Id.*

[123] *LaFontaine*, 159 Misc. 2d at 766, 603 N.Y.S.2d at 670. (citing Coolidge v. New Hampshire, 403 U.S. 443 (1971)).

[124] People v. LaFontaine, 235 A.D.2d 93, 96, 664 N.Y.S.2d 587, 590 (1st Dep't 1997).

[125] *Id.* at 95, 664 N.Y.S.2d at 589-90 (citing Illinois v. Lahr, 589 N.E.2d 539 (1992) (recognizing the common law rule that "police officers had no authority to arrest a defendant outside the territorial limits of the political entity which appointed them to their office"); Conn. v. Stevens, 603 A.2d 1203, 1207 (1992) (recognizing the general rule that "police officers acting outside their jurisdiction do not act in their official capacity, nor do they have official power to arrest")). *See* N.Y. CRIM. PROC. LAW § 140.55 (McKinney 1997) (providing an exception to this rule by permitting a police officer from another State who is in close pursuit of a suspect, to arrest that suspect in this State).

[126] *LaFontaine*, 235 A.D.2d at 96, 664 N.Y.S.2d at 590 (citing Colorado v. Hamilton 666 P.2d 152 (1983)).

[127] *Id.* (citing Illinois v. Lahr, 589 N.E.2d 539 (1992); Conn. v. Stevens, 603 A.2d 1203 (1992); Florida v. Phoenix, 428 So.2d 262 (1982)). *See also* United States v. Heliczer, 373 F.2d 241 (2d Cir. 1967) (holding that defendant's arrest by federal narcotic agents was lawful without a warrant under the New York statute which permits an arrest of another by a private person when the person arrested has committed a felony); United States v. Viale, 312 F.2d 595 (2d Cir. 1963) (holding that agents lacked authority under law to arrest defendant without a warrant absent reasonable cause to believe

court addressed the question of whether or not the arrest of the defendant in New York by New Jersey officers was valid as a citizens arrest.[128] Since this was an issue of first impression in New York, the court relied on authority from other states.[129] While some courts have held that a police officer acting under the "color of authority" outside his jurisdiction, loses his status as a private person,[130] the Appellate Division adopted the view that a police officer's extraterritorial arrest is not invalidated unless "the police officer uses the power of his office to obtain evidence not available to private citizens."[131]

In *Illinois v. Lahr*,[132] the Illinois Supreme Court upheld the invalidation of an arrest made by a police officer who utilized a radar gun to detect speeders outside of the officer's jurisdiction.[133] The court reasoned that the use of the radar gun by the officer removed the arrest from the purview of a citizen's arrest because citizens are not typically armed with radar guns.[134] Because the police officer used the power of his office to obtain evidence

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that the defendant was committing or attempting to commit a misdemeanor in their presence).

[128] *LaFontaine*, 235 A.D.2d at 96, 664 N.Y.S.2d at 590. *See* N.Y. CRIM. PROC. LAW § 570.34 (McKinney 1997). This section provides in pertinent part: "The arrest of a person in this state may be lawfully made also by any police officer or a private persons, without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a [felony]." *Id.*

[129] People v. LaFontaine, 159 Misc. 2d 751, 757, 603 N.Y.S.2d 660, 665 (Sup. Ct. New York County 1993).

[130] *LaFontaine*, 235 A.D.2d at 97, 664 N.Y.S.2d at 591. *See* Collins v. Florida, 143 So.2d 700 (1962) (holding that officials acting outside their jurisdiction are sustainable as acts of private citizens only if they are not acting "under color of their office"); Commonwealth v. Troutman, 302 A.2d 430 (Pa. 1973) (holding that once a police officer invokes the power of the township to make an arrest he can not preserve the legality of the arrest by labeling his behavior a citizen's arrest).

[131] *LaFontaine*, 235 A.D.2d at 97-98, 664 N.Y.S.2d at 591 (citing Florida v. Phoenix, 428 So.2d 262 (1982); Illinois v. Lahr, 589 N.E.2d 539 (Ill. 1992)).

[132] 589 N.E.2d 539 (Ill. 1992).

[133] *Lahr*, 589 N.E.2d at 540.

[134] *Id.* at 540-41.

unavailable to the private citizen, the arrest did not qualify as a citizen's arrest.[135]

In *Florida v. Phoenix*,[136] police officers effected an arrest while outside the confines of their jurisdiction.[137] The police officers, investigating a suspected smuggling operation outside their own county, were in uniform and using marked police cars and an aircraft to "tail" a suspect vehicle.[138] The officers pursued the defendant, stopped defendant's car, identified themselves as police officers and arrested the occupants.[139] Subsequently, while searching the defendant's car, the police officers found drugs inside of the vehicle.[140] The Florida Supreme Court held that an extrajurisdictional arrest could be validated as a citizens arrest, even though the police officers identified themselves as police and used a marked car.[141] The court reasoned that "law enforcement officials, when they are outside their jurisdiction, should not be any less capable, by virtue of their position, of making a felony arrest than a private citizen . . . neither should they have any greater power of arrest outside their jurisdiction than private citizens."[142]

Similarly, in *LaFontaine*, there were no specific law enforcement instruments utilized which would not ordinarily have been used by private individuals.[143] The police officers simply

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[135] *Id.*

[136] 428 So.2d 262 (1982).

[137] *Phoenix*, 455 So.2d at 1024.

[138] *Id.*

[139] *Id.* at 1024-25.

[140] *Id.* Defendants were charged with the crime of trafficking in marijuana. *Id.* at 1025. They moved to suppress the evidence arguing that the stop and search of their vehicle by officers outside of their jurisdiction, was unlawful because the officers acted "under color of office." *Id.*

[141] *Id.*

[142] *Id.* (citations omitted).

[143] People v. LaFontaine, 235 A.D.2d 93, 98, 664 N.Y.S.2d 587, 591 (1st Dep't 1997). The court stated that "[o]ther than identifying themselves as police, the New Jersey officers did nothing that could not have been done by any private person." *Id.*

knocked on the defendant's door and identified themselves as police.[144] As the court opined, the officers "simply made a warrantless arrest of a fleeing felon on a fire escape."[145] Hence, the court declined to reach the conclusion that the New Jersey officers had acted as police officers, rather, the court determined that the officers acted in the capacity of private citizens.[146]

Nevertheless, defendant argued that even if the court were to determine that the police officers were acting as private citizens, the arrest was nonetheless unlawful.[147] Relying on cases which hold that private citizens are not permitted to make arrests inside a private apartment, defendant argued that he had been coerced out of his apartment and therefore constructively arrested without a warrant inside his apartment.[148] The court rejected this argument, distinguishing the cases relied on by the defendant as involving situations where the defendant was surrounded by many police officers who had their guns drawn.[149] Such a set of circumstances was clearly not present in this case as the defendant's exit from his apartment was voluntary and not a function of official police coercion.[150]

The court continued its analysis by holding that even if the police officers were not acting in the capacity of private citizens, the evidence should still not be suppressed.[151] The court reasoned

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[144] *Id.*

[145] *Id.*

[146] *Id.* Although the police officers acted in their law enforcement capacity when they obtained the cooperation of the New York City police and when they obtained the arrest warrants, they did not gain evidence solely due to their official status as police officers. *Id.* Moreover, it is uncontested that the evidence was in plain view to everyone inside the defendant's apartment. *Id.*

[147] *Id.*

[148] *Id.* (citing United States v. Maez, 872 F.2d 1444 (10th Cir. 1989); United States v. Al-Azzawy, 784 F.2d 890 (9th Cir. 1986); United States v. Morgan, 743 F.2d 1158 (6th Cir. 1984)).

[149] *LaFontaine*, 235 A.D.2d at 98-99, 664 N.Y.S.2d at 591.

[150] *Id.* at 99, 664 N.Y.S.2d at 592. The actual arrest of the defendant took place on the fire escape, not in the apartment. *Id.* However, the defendant was returned to his apartment to get a shirt and to assist a crying child. *Id.*

[151] *Id.*

that "violations of statutory requirements in criminal prosecutions will result in the sanction of suppression of evidence only where a constitutionally protected right is implicated."[152] The court found that there was no such constitutionally protected right violated here because the Fourth Amendment, which sets forth the constitutional right to be free from unreasonable search and seizure, does not mandate a corresponding right to be free from arrest by statutorily unauthorized individuals.[153]

In *People v. Walls*,[154] the New York Court of Appeals also refused to suppress evidence notwithstanding the police officers violation of a State's statutory requirements.[155] In *Walls*, two New York City police officers pursued and arrested the defendants on the New Jersey side of the Lincoln Tunnel.[156] The defendants argued, *inter alia*, that the evidence seized from them should be suppressed as the New York police officers failed to comply with a New Jersey statute which required prompt arraignment before a New Jersey magistrate and an extradition proceeding in New Jersey.[157] The court rejected this challenge, holding that the arrest and search were valid as the police officers had acted in good faith and did not knowingly or intentionally disregard the law.[158]

Relying on its decision in *Walls*, the New York Court of Appeals, in *People v. Sampson*,[159] refused to suppress evidence obtained in violation of statutory guidelines.[160] In *Sampson*, New York police officers failed to follow statutory guidelines when

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[152] *Id.* (citing Charles Q. v. Constantine, 85 N.Y.2d 571, 650 N.E.2d 839, 626 N.Y.S.2d 992 (1995); People v. Patterson, 78 N.Y.2d 711, 587 N.E.2d 255, 579 N.Y.S.2d 617 (1991)).

[153] *LaFontaine*, 235 A.D.2d at 100, 664 N.Y.S.2d at 593.

[154] 35 N.Y.2d 419, 321 N.E.2d 875, 363 N.Y.S.2d 82 (1974).

[155] *Id.* at 424, 321 N.E.2d at 876, 363 N.Y.S.2d at 84.

[156] *Id.* at 423-24, 321 N.E.2d at 876, 363 N.Y.S.2d at 83.

[157] *Id.* at 424, 321 N.E.2d at 876, 363 N.Y.S.2d at 84.

[158] *Id.*

[159] 73 N.Y.2d 908, 536 N.E.2d 617, 539 N.Y.S.2d 288 (1989).

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

they arrested the defendant in Vermont.[161] The court denied defendant's request to suppress evidence, holding that "any violation of the statutory guidelines concerning arrests made out of state, does not, in this case, call for suppression."[162]

Similarly, in *LaFontaine,* the court determined that the only possible violation by the New Jersey police officers was statutory and not constitutional.[163] As the Colorado Supreme Court stated in *Colorado v. Hamilton*,[164] a case cited in *LaFontaine*, the "sanction of the exclusionary rule is designed to effectuate guarantees against deprivation of constitutional rights" and violations of statutory proscriptions against extraterritorial arrests "are not *per se* violations of constitutionally protected rights."[165] Finally, the *LaFontaine* court found that there was no viable claim that the police officers lacked probable cause when they arrested defendant, because the police officers possessed valid

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[161] *Id.* Defendant, a resident of Vermont, was a suspect in a murder that took place in New York. *Id.* at 908-09, 536 N.E.2d at 617, 539 N.Y.S.2d at 288. When the New York City police officers went to question the defendant in Vermont, he confessed to the murders. *Id.* at 909, 536 N.E.2d at 617, 539 N.Y.S.2d at 288. Thereafter, the police officers arrested the defendant in Vermont. *Id.* However, subsequent to his confession, the defendant made additional incriminating statements. *Id.* The defendant argued that the statements made following his initial confession were products of an illegal detention by the police officers. *Id.* at 909, 536 N.E.2d at 618, 539 N.Y.S.2d at 288-89.

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

[163] People v. LaFontaine, 235 A.D.2d 93, 100, 664 N.Y.S.2d 587, 592-93 (1st Dep't 1997). "At worst, the New Jersey officers violated procedural statutes that confer the power to arrest and execute warrants on a specific class of persons." *Id.* at 100, 664 N.Y.S.2d at 592.

[164] 666 P.2d 152 (Colo. 1983). In *Hamilton*, police officers from the Town of Golden executed an arrest warrant upon the defendant inside a Bank located in Denver, Colorado, which was located outside of the territorial limits of their authority. *Id.* at 153. The court held that the arrest was "not so unreasonable as to violate defendant's constitutional protection against unreasonable searches and seizures." *Id.* at 157.

[165] *Id.* at 156 (citations omitted).

New Jersey and Federal warrants for the defendant's arrest.[166] Therefore, the court concluded that the "Fourth Amendment's protection against unreasonable search and seizure, and the exclusionary rule remedy," were not applicable here.[167]

The federal and state positions regarding the propriety of police officers executing arrest warrants outside of their jurisdictions are analogous. In fact, the New York court specifically relied upon cases from both federal and other state courts to support the proposition that under certain circumstances, a police officer may make an arrest in another jurisdiction.[168] The court in *LaFontaine* offered two solutions to the problem. Solution one likens the police officer to a private citizen and as such removes the officer's conduct from the purview of the Fourth Amendment.[169] Solution two analyzes whether the police officer's actions, as opposed to his identity, are consistent with the tenets of the Fourth Amendment.[170] Therefore, if a New Jersey police officer executes an arrest in New York pursuant to a valid New Jersey

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[166] *LaFontaine*, 235 A.D.2d at 100, 664 N.Y.S.2d at 592. *See also* Colorado v. Hamilton, 666 P.2d 152 (Colo. 1983) (concluding that even though the arrest of the defendant was unauthorized, the presence of the warrant established the probable cause for the arrest).

[167] *LaFontaine*, 235 A.D.2d at 100, 664 N.Y.S.2d at 592. (citing North Carolina v. Mangum, 226 S.E.2d 852 (1976)). The dissent opined that from the outset of this case the New Jersey officers were wholly without jurisdiction to effect the arrest of the defendant in the State of New York. *Id.* at 108-09, 664 N.Y.S.2d at 598 (Tom, J., dissenting). Therefore, since the jurisdictional predicate for the arrest was invalid, any evidence seized incident to such arrest must be suppressed as a matter of law. *Id.* (Tom, J., dissenting). Additionally, the dissent stated that the New York statute that limits the authority to effect an arrest to duly sworn New York officers, is predicated upon the constitutional principle that a state has the authority to effect an arrest. *Id.* at 107-08, 664 N.Y.S.2d at 597 (Tom, J., dissenting). Since the New Jersey police officers were acting outside the scope of authority to arrest individuals in New York City, the arrest must be held invalid. *Id.* (Tom, J., dissenting).

[168] *LaFontaine*, 235 A.D.2d at 99, 664 N.Y.S.2d at 592-93.

[169] *Id.* at 96, 664 N.Y.S.2d at 590.

[170] *Id.* at 97, 664 N.Y.S.2d at 590.

arrest warrant and in so doing finds narcotics in plain view, his conduct will be evaluated, and not his identity.[171]

People v. Smith[172]
(decided May 15, 1997)

Defendant, William Smith, also known as Frank Mills, was convicted after a jury trial in the Supreme Court, New York County, of grand larceny in the third and fourth degree, fourteen counts of offering a false instrument for filing in the first degree, and criminal possession of a forged instrument in the second degree.[173] Defendant was sentenced to concurrent terms of three and one-half years to seven years on the third degree grand larceny conviction, two years to four years on the fourth degree grand larceny and the criminal possession of a forged instrument in the second degree convictions, and one and one-half years to three years on each of the offering a false instrument for filing in the first degree convictions.[174]

Defendant appealed his conviction on the grounds that his right to be free from illegal search and seizure under the Federal[175] and

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[171] *Id.* at 98, 664 N.Y.S.2d at 591.

[172] 658 N.Y.S.2d 259 (1st Dep't), *appeal denied*, 90 N.Y.2d 911, 686 N.E.2d 232, 663 N.Y.S.2d 520 (1997).

[173] *Id.* at 260. The New York statute for grand larceny in the third and fourth degree is embodied in New York Penal Law §§ 155.35 and 155.30 respectively. N.Y. PENAL LAW §§ 155.35, 155.30 (McKinney 1996). The New York statute for offering a false instrument in the first degree is embodied in the New York Penal Law § 175.35. N.Y. PENAL LAW § 175.35 (McKinney 1996). The New York statute for criminal possession of a forged instrument in the second degree is embodied in the New York Penal Law § 170.25. N.Y. PENAL LAW § 170.25 (McKinney 1996).

[174] *Smith,* 658 N.Y.S.2d at 260.

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