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Search and Seizure, Supreme Court, New York County: People v. Rodgers

with his liberty."[342] Notwithstanding the result in *Johnson,* the New York Constitution gives less deference to the states police power to conduct a search and seizure as compared to the United States Constitution.[343] While the United States Constitution requires either a physical restraint or a "submission to a show of authority", the New York Constitution goes further in allowing an action to be based upon an officer merely giving a verbal command.[344] Hence, when viewing search and seizure violations under the New York Constitution, the court will place the officers action under greater scrutiny than it would under the United States Constitution.

SUPREME COURT

NEW YORK COUNTY

People v. Rodgers[345]
(decided June 4, 1997)

Defendant, Richard M. Rodgers, was indicted on counts of manslaughter, criminal possession of a controlled substance, and criminal possession of a hypodermic instrument.[346] In a pre-trial suppression hearing, defendant argued that his rights under both the Federal[347] and New York State[348] Constitutions, protecting

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[342] *Id.*

[343] *Id.*

[344] *Id.*

[345] 173 Misc. 2d 482, 661 N.Y.S.2d 452 (Sup. Ct. New York County 1997).

[346] *Id.* at 483, 661 N.Y.S.2d at 453.

[347] U.S. CONST. amend. IV. The Fourth Amendment states:

> 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.

Id.

him from an illegal search and seizure, had been violated and that the evidence sought to be admitted at trial should therefore be suppressed.[349] Defendant filed a motion to suppress a syringe, spoon, and pills, which were found on his person during the course of medical treatment by doctors, which followed an automobile accident.[350] The County Court of New York denied the motion to suppress the syringe and spoon because "there was not any constitutional problem with their discovery, seizure and delivery to the police since they fell out of the defendant's pocket during medical treatment following a car accident."[351] "[T]he involvement of the police at that point was purely incidental."[352] Similarly, there was no problem with the police possessing the pills. "These items were delivered to the police as the result of a private search, and no Fourth Amendment problem arose (nor was there one under New York's equivalent provision in Article I, section 12 of the Constitution)."[353] However, the County Court granted the motion to suppress the pills due to the fact that the police eventually tested the pills without first obtaining a warrant.[354]

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[348] N.Y. CONST. art. I, § 12. Article I, § 12 of the New York State Constitution provides:

> The right of the people to be secure in their persons, houses, paper 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.

Id.

[349] *Rodgers*, 173 Misc. 2d at 484, 661 N.Y.S.2d at 453.

[350] *Id.*, 661 N.Y.S.2d at 453.

[351] *Id.* at 489, 661 N.Y.S.2d at 457.

[352] *Id.*

[353] *Id.*

[354] *Id.* The Court reasoned that since the police were already in possession of the pills, there were no exigent circumstances excusing the warrant requirement. "[T]he fact that the police may very well have had probable cause to get a warrant to test the pills does not excuse their failure to do so." *Id.*

In February of 1996, the defendant was involved in a car accident with another vehicle.[355] An investigation which took place at the scene of the accident determined that defendant's car entered the opposite lane of traffic, struck another vehicle head-on, and ultimately killed the driver of the other car.[356] Defendant was seriously injured and was taken by an emergency rescue team to the hospital before the police were able to reach the scene of the accident.[357] A State Trooper was dispatched to the hospital in order to find the defendant because he was believed to be at fault in the accident.[358] After the Trooper arrived at the hospital, he found the defendant being treated by emergency personnel.[359] While waiting to speak with the defendant about the accident, the Trooper witnessed members of the hospital's staff struggling with the defendant while trying to start an IV and remove his clothing.[360] The Trooper was summoned to the emergency room in order to help calm the defendant.[361] After it was decided that the defendant could be moved without the possibility of sustaining further injury, the emergency room personnel removed the defendant's jacket, and upon doing so, the staff noticed, that a syringe and a spoon had fallen out of the jacket pocket.[362] "Concerned about what substances the defendant might have injected, in terms of potential interaction with any treatment medication, hospital personnel on their own initiative searched the defendant's jacket pocket, and found two handfuls of pills."[363]

The hospital staff then brought the syringe, spoon, and pills to the police[364] which thereafter remained in police custody.[365]

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[355] *Id* at 483, 661 N.Y.S.2d at 453.

[356] *Id.*

[357] *Id.*

[358] *Id.*

[359] *Id.*

[360] *Id.*

[361] *Id.*

[362] *Id.*

[363] *Id.* at 484, 661 N.Y.S.2d at 453.

[364] *Id.*

[365] *Id.*

Subsequently, the pills and the prescription bottle were tested by the police.[366] The police used the test results to charge and later indict the defendant.[367] Defendant argued that the police were "required to obtain a warrant to both search and seize the defendant's property."[368] It was admitted that there was no warrant obtained in this case.[369]

The county court began its analysis with a discussion of the policy underlying the warrant requirement of the Fourth Amendment by citing to the United States Supreme Court in *Johnson v. United States*.[370] In *Johnson*, the Court highlighted the important protections of the Fourth Amendment[371] and explained that many "zealous officers" do not understand that, in the heat of the moment, they cannot be so intrusive as to go beyond the boundaries of the law.[372] Whether a lawful search and/or seizure can be made must be determined by a "neutral and detached magistrate" instead of being judged by "the officer engaged in the often competitive enterprise of ferreting out a crime."[373] Familiar exceptions to the presumptive requirement

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[366] *Id.*

[367] *Id.* Defendant was indicted on drug and manslaughter charges following the accident. *Id.*

[368] *Id.*

[369] *Id.*

[370] *Id.* Johnson v. United States, 333 U.S. 10 (1948). In *Johnson*, defendant was arrested when a Seattle police officer was given a confidential tip that the defendant, a known narcotics user, was smoking opium in her hotel. *Id.* at 12. The strong odor of the opium led the police officers directly to the defendant's room. *Id.* When questioned about the smell by the officers, the defendant denied any opium was being smoked. *Id.* The police then proceeded to arrest the defendant and search her room. *Id.* The District Court refused to suppress this evidence, which resulted in the defendant's conviction. *Id.* The Court of Appeals affirmed and the United States Supreme Court reversed holding the search was a violation of the Fourth Amendment of the United States Constitution. *Id.* at 15.

[371] *Johnson,* 333 U.S. at 14-15.

[372] *Id.*

[373] *Id.* The Court stated that:

> Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search

that a warrant be obtained[374] including situations where the "circumstances were exigent,"[375] "the items were in plain or open view,"[376] "the items were contraband or were inherently dangerous,"[377] or they were in the "grabbable area" of the defendant, "or that a police officer would have a reasonable concern for his own safety, which would justify a limited search to prevent the accosted person from reaching for a gun,"[378] "or as part of an inventory search after a lawful vehicle impoundment,"[379] "or pursuant to a lawful arrest."[380]

In *Arkansas v. Sanders*,[381] the police properly stopped a taxi to search for illegal substances.[382] During he search, the police unlocked suitcase inside the trunk for contraband.[383] Relying on

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> warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's home secure only in the discretion of police officers. . . . [W]hen the right of privacy must reasonably yield to the right of search is as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent.

Id.

[374] People v. Rodgers, 173 Misc. 2d 482, 485, 661 N.Y.S.2d 452, 454 (Sup. Ct. New York County 1997).

[375] *Id.* at 485, 661 N.Y.S.2d at 454.

[376] *Id.*

[377] *Id.*

[378] *Id.*

[379] *Id.*

[380] *Id.* (citing Arkansas v. Sanders, 442 U.S. 753, 758 (1979)). In *Sanders*, the Supreme Court determined that "[t]he mere reasonableness of a search, assessed in the light of the surrounding circumstances, is not a substitute for the judicial warrant requirement under the Fourth Amendment." *Id.* (quoting Coolidge v. New Hampshire, 403 U.S. 443, 481 (1971)). "The warrant requirement . . . is not an inconvenience to be somehow 'weighed' against the claims of police efficiency. It is, or should be, an important part of our machinery of government . . . ." *Id.*

[381] 442 U.S. 753 (1979).

[382] *Id.* at 755.

[383] *Id.*

its earlier holding in *United States v. Chadwick*,[384] the Supreme Court held that even though the police had probable cause to stop the vehicle and to search it, they still needed a warrant to search the suitcase found inside the vehicle.[385] Similarly, in *People v. Roth*,[386] the New York Court of Appeals of New York held that "an officer was not justified in removing papers from the defendant's jacket pocket based on the officer safety/fear of weapons exception to the warrant requirement."[387] "The plain view exception also did not apply, because the discovery was not inadvertent."[388]

In contrast, the Court of Appeals held in *People v. Adler*[389] that "[a] warrantless search of a parcel was valid where an airline employee searched a package in another city for reasons pertaining to airline procedures, and then turned the package over to the police in that city."[390] The police, upon testing its

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[384] 433 U.S. 1 (1977). The *Chadwick* Court found that the respondents were entitled to the protection of the "Warrant Clause" of the Fourth Amendment, with the evaluation of a neutral magistrate, before their privacy interests in the contents of the foot locker could be invaded. *Id.* at 15-16.

[385] People v. Rodgers, 173 Misc.2d 482, 485, 661 N.Y.S.2d 452, 454 (Sup. Ct. New York County 1997) (citing United States v. Chadwick, 433 U.S. 1). The *Chadwick* Court found that the police should have taken the suitcase to the station and obtained a search warrant before opening it. *Id.* "An officer's authority to possess a package is distinct from his authority to examine its contents." *Id.*

[386] 66 N.Y.2d 688, 487 N.E.2d 270, 496 N.Y.S.2d 413 (1985).

[387] *Rodgers*, 173 Misc. 2d at 486, 661 N.Y.S.2d at 454. Once any reasonable basis for the officer's fear for his safety has abated, he was not justified in seizing the papers, which were folded over and secured with a rubberband, and causing the packet to be unwrapped and examined. *Id.* (citing *Roth*, 66 N.Y.2d at 690, 487 N.E.2d at 271, 496 N.Y.S.2d at 414).

[388] *Rogers*, 173 Misc. 2d at 486, 661 N.Y.S.2d at 454-55. "Under the plain view doctrine, if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may not seize it without a warrant." *Id.* (quoting Minnesota v. Dickerson, 508 U.S. 366, 375 (1993)).

[389] 50 N.Y.2d 730, 409 N.E.2d 888, 431 N.Y.S.2d 412 (1980).

[390] *Rodgers*, 173 Misc. 2d at 486, 661 N.Y.S.2d at 455.

contents, found controlled substances, marked and re-sealed the package, and notified the New York police which was the parcel's ultimate destination.[391] The package was then returned to the carrier and sent to New York.[392] Before delivery, New York police had the contents of the package re-tested.[393] They again re-sealed it and arrested the defendant upon her claiming the package.[394] "There was no governmental involvement until after a private search revealed the probable contraband"[395] moreover, "[s]ince the New York police search was no more intrusive than a private search, the warrantless search was upheld."[396]

Furthermore, the *Rodgers* court relied on *People v. Crank*,[397] a decision with a similar factual situation to the case at bar. In *Crank*, the court denied the suppression of a handgun, as a product of a private search.[398] Additionally, the *Crank* court relied on *People v. Hayes*,[399] where the County Court held that a defendant had no reasonable expectation of privacy in the hospital or in the outward appearance of the clothing that he wore to the hospital, which was visible to all.[400] However, defendant's property rights to the clothes were violated when they were removed from the hospital without a warrant and his property

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[391] *Id.*

[392] *Id.*

[393] *Id.*

[394] *Id.* The *Adler* Court noted that the Fourth Amendment prohibits unreasonable searches, not all searches, and that searches by private parties do not trigger the Fourth Amendment (citing People v. Gleeson, 36 N.Y.2d 462, 369 N.Y.S.2d 113 (1975)), unless the search is so intertwined with governmental activity as to lose its 'private' character. *Id.* (citing People v. Esposito, 37 N.Y.2d 156, 371 N.Y.S.2d 681 (1975); People v. Elliot, 131 Misc. 2d. 611, 501 N.Y.S.2d 265 (Sup. Ct. Queens County 1986)).

[395] *Id.*

[396] *Id.*

[397] 155 Misc. 2d 762, 590 N.Y.S.2d 149 (Sup. Ct. Monroe County 1992).

[55] *Id.*

[399] 154 Misc. 2d 429, 584 N.Y.S.2d 1001 (Sup. Ct. New York County 1992).

[400] *Id.*

rights were infringed by a blood analysis performed on the clothing.[401]

In *Rodgers*, the County Court determined that the police had the right to possess the narcotics found on the defendant.[402] Since the drugs were found to be the result of a private search performed by a medical staff rather than the police, there was no infringement on either the Fourth Amendment of the Federal Constitution, or Article I, section 12 of the New York State Constitution.[403] The police in *Rodgers*, however, made a mistake similar to the one made in *Hayes*.[404] In both situations, the police without a warrant, performed tests on the drugs.[405] Based upon these circumstances, the *Rodgers* court ultimately suppressed the admission of the pills because to hold otherwise would violate the dictates of both United States Supreme Court cases and their parallel state court holdings.[406]

In conclusion, both the Federal and New York State Constitutions read identically in regard to their provisions concerning search and seizure. Emerging case law have interpreted these provisions similarly. The protection of the people and their right to feel safe in their persons is paramount. In deciding the case at bar,[407] the County Court of New York analyzed both provisions and the cases that interpreted those provisions. For example, the court cited to the United States Supreme Court decision of *United States v. Chadwick*,[408] in order to show the prominence of the warrant requirement of the Fourth Amendment. The *Chadwick* Court found that while the police had every right to take a suitcase out of a vehicle they pulled

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[401] *Id.*

[402] *Rodgers*, 173 Misc. 2d at 489, 661 N.Y.S.2d at 457.

[403] *Id.*

[404] 154 Misc. 2d 429, 584 N.Y.S.2d 1001 (Sup. Ct. New York County 1992).

[405] *Rodgers*, 173 Misc. 2d at 489, 661 N.Y.S.2d at 457.

[406] *Id.*

[407] People v. Rodgers, 173 Misc.2d 482, 661 N.Y.S.2d 452 (Sup. Ct. New York County 1997).

[408] 433 U.S. 1 (1977).

over, they must obtain a search warrant before examining the suitcase's contents.[409] This precedent can be similarly reconciled in the New York Supreme Court case of *People v. Hayes*.[410] In *Hayes*, the police had the authority to remove clothing of a defendant from a hospital. However, the police exceeded their boundaries when they performed tests of the blood found on the defendant's clothing.[411]

SUPREME COURT

QUEENS COUNTY

People v. Brewer[412]
(decided June 10, 1997)

Three men were charged with criminal weapons possession after the arresting officers stopped their vehicle in traffic.[413] They moved to suppress physical evidence obtained by the police, and statements made to police.[414] Defendants argued that the evidence was obtained in violation of their rights against unlawful search and seizure, guaranteed by the United States Constitution[415] and the New York State Constitution.[416] The motion to suppress was denied because the search of the

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[409] *See* United States v. Chadwick, 433 U.S. 1 (1971).

[410] 154 Misc. 2d 429, 584 N.Y.S.2d 1001 (Sup. Ct. New York County 1992).

[411] *Id.*

[412] 173 Misc. 2d 520, 622 N.Y.S.2d 172 (Sup. Ct. Queens County 1997).

[413] *Id.* at 521, 622 N.Y.S.2d at 172.

[414] *Id.*

[415] U.S. CONST. amend. IV. The amendment protects the right "of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures . . . but upon probable cause supported by oath or affirmation . . . ." *Id.*

[416] N.Y. CONST. art. I, § 12, cl. 1. This provision mirrors the Fourth Amendment of the Federal Constitution verbatim.