



1995

## Search & Seizure

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 [Law Enforcement and Corrections Commons](#)

---

### Recommended Citation

(1995) "Search & Seizure," *Touro Law Review*: Vol. 11 : No. 3 , Article 64.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol11/iss3/64>

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).

## SUPREME COURT, APPELLATE DIVISION

## FIRST DEPARTMENT

People v. Ramos<sup>94</sup>  
(decided June 7, 1994)

The defendant appealed the denial of his motion to suppress evidence, obtained following an illegal search of premises in which he had a reasonable expectation of privacy,<sup>95</sup> claiming that his right to be free from unreasonable searches and seizures was violated under both the New York<sup>96</sup> and United States<sup>97</sup> Constitutions. Moreover, he claimed that the warrantless search of his mother's apartment, absent exigent circumstances,<sup>98</sup> violated his rights under the New York Constitution.<sup>99</sup> Therefore, defendant argued, his arrest was rendered invalid<sup>100</sup> and, to this end, the resulting "drive-by confirmatory identification" by the undercover officer should have been suppressed.<sup>101</sup> The Appellate Division, First Department held that the defendant had a legitimate expectation of privacy in his mother's apartment and that the warrantless search of the premises did, in fact, violate both the State and Federal Constitutions.<sup>102</sup> Consequently, it found that the defendant's arrest and the seizure of property were illegal and, therefore, this

---

94. 613 N.Y.S.2d 870 (App. Div. 1st Dep't 1994).

95. *Id.* at 872.

96. N.Y. CONST. art. I, § 12. The provision states in pertinent part: "The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . ." *Id.*

97. U.S. CONST. amend. IV. The Fourth Amendment provides in pertinent part: "The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . ." *Id.*

98. *Ramos*, 613 N.Y.S.2d at 872.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

evidence should have been suppressed.<sup>103</sup> However, the court held that the officer's subsequent identification was admissible because, although the warrantless entry was illegal,<sup>104</sup> his arrest was made with probable cause.<sup>105</sup>

After defendant was involved in a cocaine sale to an undercover officer, another officer followed the defendant to his mother's apartment.<sup>106</sup> Without knowledge that an officer was following him, the defendant let the undercover officer into the building and defendant continued toward the apartment.<sup>107</sup> The officer intentionally remained behind and waited for the defendant to enter the apartment, hoping not to arouse the defendant's suspicion.<sup>108</sup> Officers then proceeded to use a "battering ram" to gain access the apartment, without a warrant, and arrested the defendant.<sup>109</sup>

The appellate division held that \$10 in "buy money" found on the defendant should have been suppressed as a fruit of the defendant's unlawful arrest. The court found defendant's warrantless arrest and seizure of the "buy money" to be a violation of defendant's constitutional rights for two reasons. First, the court found that the defendant had a reasonable expectation of privacy in the apartment.<sup>110</sup> Based on the United States Supreme Court's decision in *Payton v. New York*,<sup>111</sup> the *Ramos* court held that the Fourth Amendment's prohibition against police making warrantless and non-consensual entry into a home to effect an arrest and search the premises was violated where police entered defendant's mother's apartment and seized money.<sup>112</sup> The court found that, although the defendant did not

---

103. *Id.*

104. *Id.*

105. *Id.* at 873.

106. *Id.* at 872.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. 445 U.S. 573 (1980).

112. *Ramos*, 613 N.Y.S.2d at 872. See *Payton*, 445 U.S. at 589-90. The language of the Fourth Amendment certainly confirms:

live in the apartment, he had free access and was permitted by his mother to “keep an eye” on the premises.<sup>113</sup>

Second, the court rejected the officers’ contention that compelling circumstances existed which alleviated their need to obtain a warrant.<sup>114</sup> The court concluded that, although the police had probable cause to arrest the defendant, there was no justifiable reason for their forcible entry.<sup>115</sup> In consideration of the defendant’s state constitutional claim for suppression, the court relied on the ruling in *People v. Harris*,<sup>116</sup> in which the New York Court of Appeals determined that any evidence obtained in accordance with an unlawful arrest must be excluded.<sup>117</sup> In *Harris*, the court held that when a defendant is arrested without a warrant, as occurred in *Payton*, any evidence obtained after the defendant’s right to counsel should have attached must be suppressed.<sup>118</sup>

However, the Appellate Division, First Department held that the “illegality” of the defendant’s arrest did not compel

‘[T]he right of a man to retreat into his own home and there be free from unreasonable government intrusion.’ In terms that apply equally to seizures of property and seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

*Id.* (citation omitted).

113. *Ramos*, 613 N.Y.S.2d at 872.

114. *Id.*

115. *Id.* The court cites the absence of evidence that “the police were in hot pursuit” or apprehensive that the defendant would get rid of the “buy money,” as he was not cognizant of the fact he was being pursued, as evidenced by the officer’s failure to corroborate exigent circumstances. *Id.* at 872. *See People v. Robert*, 156 A.D.2d 730, 549 N.Y.S.2d 176, 177 (2d Dep’t 1989) (reversing defendant’s conviction on the ground that evidence, seized as a result of unjustified police entry into his home and without the existence of compelling circumstances, “must be suppressed as the product of an illegality”).

116. 77 N.Y.2d 434, 440, 570 N.E.2d 1051, 1055, 568 N.Y.S.2d 702, 706 (1991) (holding that “statements obtained from an accused following an arrest made in violation of *Payton* are not admissible under the State Constitution if they are a product of the illegality”).

117. *Ramos*, 613 N.Y.S.2d at 873.

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

suppression of the “drive-by confirmatory identification by the undercover officer.”<sup>119</sup> The court stated that “[w]hile we hold that the property found on the defendant during the search made pursuant to his arrest must be suppressed” this was not a situation where, even if a defendant had a right to counsel, the lawyers presence would have been required.<sup>120</sup> “Under both Federal and State law, the right to counsel attaches once criminal proceedings have commenced.”<sup>121</sup> However, “[t]he safeguards guaranteed by this [s]tate’s Right to Counsel Clause are unique.”<sup>122</sup> Under New York law, since criminal proceedings do not begin until an arrest warrant has been issued,<sup>123</sup> the absence of such a warrant requires suppression of any evidence obtained as a result of a warrantless arrest under *Payton*, but does not invalidate the “confirmatory identification.”<sup>124</sup> Distinguishing this case from *People v. Bolden*,<sup>125</sup> the court found that the officers had sufficient probable cause to precipitate an arrest, and, therefore, there was no unlawful detention of the defendant.<sup>126</sup>

On the state level, the court found the officer’s attestation of the defendant’s identity an “ordinary and proper completion of an integral police procedure”<sup>127</sup> and, therefore, constitutional.<sup>128</sup>

119. *Ramos*, 613 N.Y.S.2d at 872.

120. *Id.*

121. *Id.* at 872-73. See *People v. Harris*, 77 N.Y.2d at 439, 570 N.E.2d at 1054, 568 N.Y.S.2d at 705.

122. *Id.* See N.Y. CONST. art. 1, § 6. This section states 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 . . . .” *Id.*

123. *Harris*, 77 N.Y.2d at 440, 570 N.E.2d at 1054, 568 N.Y.S.2d at 705. The primary difference between the Federal and State Right to Counsel Clauses has to do with when proceedings are presumed to have begun. “Under the Federal rule . . . criminal proceedings do not necessarily start when an arrest warrant is issued. But in New York, criminal proceedings must be instituted before police can obtain a warrant.” *Id.* (citations omitted).

124. *Ramos*, 613 N.Y.S.2d at 872.

125. 197 A.D.2d 528, 602 N.Y.S.2d 212 (2d Dep’t 1993). In this case, the court found that the confirmatory identification must be suppressed exclusively on the ground that the defendant had been illegally detained by the police. *Id.*

126. *Ramos*, 613 N.Y.S.2d at 872.

127. *Id.* at 873. (citations omitted).

Relying on the ruling in *People v. Harris*,<sup>129</sup> the Ramos court found that this substantiation “[was] not tainted by the warrantless arrest” under the New York State Constitution,<sup>130</sup> notwithstanding the officer’s violation under *Payton*.<sup>131</sup> Moreover, citing *New York v. Harris*,<sup>132</sup> the court found that no violation of the defendant’s Fourth Amendment rights occurred where the verification was made subsequent to their leaving the apartment.<sup>133</sup>

The United States Supreme Court, in *Payton*,<sup>134</sup> examined a New York statute authorizing police officers to enter a suspect’s home in order to procure an arrest and seize evidence, in an attempt to redress its conflict with the Fourth Amendment’s guarantees against unreasonable searches and seizures.<sup>135</sup> In *Payton*,<sup>136</sup> police officers forcibly entered the defendant’s home without a warrant and seized evidence which, subsequently, the prosecution sought to introduce at trial.<sup>137</sup> The Court, although finding probable cause to arrest the defendant, deemed the arrest to be in violation of the defendant’s constitutional rights and, thus, found the statute to be inconsistent with the Fourth Amendment.<sup>138</sup>

128. *Id.*

129. 77 N.Y.2d 434, 437, 570 N.E.2d 1051, 1053, 568 N.Y.S.2d 702, 704 (1991) (“[R]equir[ing] . . . statements obtained from an accused following a *Payton* violation must be suppressed unless the taint has been attenuated.”).

130. *Ramos*, 613 N.Y.S.2d at 873.

131. 445 U.S. 573.

132. 495 U.S. 14 (1990).

133. *Ramos*, 613 N.Y.S.2d at 873. *See Harris*, 495 U.S. at 17. The court in *Harris* held that police officers, acting with probable cause, did not violate the defendant’s Fourth Amendment rights or state constitutional rights articulated in *Payton*, since the rule “was designed to protect the physical integrity of the home, not grant the . . . suspect protection for statements made outside the premises.” *Id.*

134. 445 U.S. 573 (1980).

135. *Id.* at 576.

136. *Id.*

137. *Id.* at 577-78.

138. *Id.* at 602.

In rendering its decision in *Payton*,<sup>139</sup> the Court relied on the intended purpose of the Fourth Amendment, to protect individuals from unreasonable searches and seizures.<sup>140</sup> The Court noted that the New York statute's 100 year existence, permitting warrantless arrests, did not protect its constitutionality from review.<sup>141</sup> Consequently, in line with "virtually all state courts"<sup>142</sup> which have questioned the constitutionality of warrantless arrests lacking urgent circumstances, the Supreme Court found New York's statute inconsistent with the Fourth Amendment and thus, unconstitutional.<sup>143</sup>

Both the United States and New York State Constitutions prohibit police officers to effect warrantless arrests, absent exigent circumstances, where a suspect anticipates a reasonable expectation of privacy. Thus, any evidence obtained in the process of securing such an unlawful arrest in violation of the defendant's constitutional rights against unreasonable searches and seizures, must be suppressed. However, this rule does not extend to confirmatory identifications once the parties have left a home where the defendant has a reasonable expectation of privacy because the tarnish of the unlawful entry has been dispelled.

139. *Id.*

140. *See* U.S. CONST. amend. IV.

141. *Payton*, 445 U.S. at 600. "Neither history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic." *Id.* at 601. Currently there are twenty-three states which permit warrantless arrests, while four prohibit unlawful entry by statute, one under the common-law and ten others on constitutional grounds, denoting a significant decline in its permissibility. *Id.* at 599-600.

142. *Id.* at 599. "Only the Supreme Court of Florida and the New York Court of Appeals . . . have expressly upheld warrantless entries to arrest in the face of a constitutional challenge." *Id.* at 600.

143. *Id.* at 603. "For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Id.* To this end, the court was not swayed by New York's justification for permitting warrantless arrests, without the existence of compelling circumstances; namely, that "the warrant requirement will pressure police to seek warrants and make arrests too hurriedly . . ." *Id.* at 602.

While the New York statute permitting warrantless arrests, without the necessary prerequisite of urgency, has been upheld under the State Constitution, the United States Supreme Court has held that such an arrest violates a suspect's Fourth Amendment rights and requires the repression of any evidence obtained coincidentally.

## SECOND DEPARTMENT

People v. Edney<sup>144</sup>  
(decided February 7, 1994)

The defendant claimed that her state<sup>145</sup> and federal<sup>146</sup> constitutional rights to be free from unreasonable searches and seizures were violated when the police failed to execute valid arrest warrants in a timely manner and engaged in a warrantless search of a bag found at her feet.<sup>147</sup> The defendant alleged that the hearing court erred in not granting her motion to suppress the evidence seized therein.<sup>148</sup> In addition, the defendant claimed that the prosecution's failure to disclose police reports violated

---

144. 201 A.D.2d 498, 607 N.Y.S.2d 380 (2d Dep't 1994).

145. N.Y. CONST. art. I, § 12. Article I, section 12 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.*

146. 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.*

147. *Edney*, 201 A.D.2d at 499, 607 N.Y.S.2d at 381.

148. *Id.*