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Search & Seizure

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[144]
(decided February 7, 1994)

The defendant claimed that her state[145] and federal[146] 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.[147] The defendant alleged that the hearing court erred in not granting her motion to suppress the evidence seized therein.[148] 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.*

the rule established in *People v. Rosario*,[149] and therefore, her conviction must be reversed.[150]

The Appellate Division, Second Department held that the officers, having followed the defendant as she traveled from one location to another to purchase narcotics, did not violate either the State or the Federal Constitution because she had no reasonable expectation of privacy while engaged in conduct that was "'readily open to public view.'"[151] Furthermore, the officers were justified in having seized the bag located at defendant's feet — a "'grabbable area,'" — in order to protect themselves against the possibility that the defendant might have concealed a weapon therein.[152] The appellate division rejected defendant's claim that the People should have been compelled to turn over police reports that were relevant to witnesses testimony because the information was the "duplicative equivalent" of what the People had previously turned over to the defendant, and thus *Rosario* was not violated.[153] Therefore, the appellate division affirmed the lower court's denial of defendant's omnibus motion to suppress the evidence and upheld the conviction.[154]

The facts involved in *Edney* are as follows. Two police officers, having observed the defendant in a van, decided to delay the execution of two outstanding arrest warrants and instead followed the defendant as she traveled from Long Island into

149. 9 N.Y.2d 286, 290, 173 N.E.2d 881, 883, 213 N.Y.S.2d 448, 451, *cert. denied*, 368 U.S. 866 (1961). The *Rosario* court found that all prior statements made by prosecution witnesses must be turned over to the defendant upon request. *Id.* However, the court found that the prosecution's failure to turn over such statements was not prejudicial because there was overwhelming proof of defendant's guilt. *Id.*

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

151. *Id.* (quoting People v. Reynolds, 71 N.Y.2d 552, 557, 523 N.E.2d 291, 293, 528 N.Y.S.2d 15, 17 (1988)).

152. *Id.* (citing People v. Gokey, 60 N.Y.2d 309, 311, 457 N.E.2d 723, 724, 469 N.Y.S.2d 618, 619 (1983)).

153. *Id.* at 500, 607 N.Y.S.2d at 381 (citing People v. Consolazio, 40 N.Y.2d 446, 454, 354 N.E.2d 801, 806, 387 N.Y.S.2d 62, 66 (1976), *cert. denied*, 433 U.S. 914 (1977)).

154. *Id.*

Manhattan.[155] Once in Manhattan, the officers observed the defendant twice exit the van, enter buildings, and return to the van fifteen minutes later.[156] Having followed the van back to Long Island, the officers then entered the van, arrested the defendant, and found a paper bag at her feet which contained approximately 100 empty vials and caps.[157]

The defendant was convicted upon a jury verdict of "criminal possession of a controlled substance in the third . . . and fourth degree, and criminal use of drug paraphernalia in the second degree."[158] At trial, the hearing court rejected defendant's omnibus motion to suppress the physical evidence — the vials that were seized without a warrant.[159]

On appeal, the appellate division held that the officers, by following her to and from Manhattan before arresting her, did not violate her state or federal constitutional rights because the defendant had "no reasonable expectation of privacy" when engaged in conduct that was "'readily open to public view.'"[160] The court reaffirmed the principle set forth in *People v. Reynolds*,[161] that "conduct and activity which is readily open to public view" is generally not protected.[162] In *Reynolds*, the New York Court of Appeals held that the defendant had no "reasonable expectation of privacy in open fields and woods where no precautions [had] been taken to exclude the public from

155. *Id.* at 499, 607 N.Y.S.2d at 380-81. The officers decided not to arrest the defendant immediately because they wanted to verify information that she frequently traveled into the city to purchase narcotics. *Id.*

156. *Id.*

157. *Id.* As the police took the defendant to the police station, they observed her abandon a quantity of crack cocaine. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* (quoting People v. Reynolds, 71 N.Y.2d 552, 557, 523 N.E.2d 291, 293, 528 N.Y.S.2d 15, 17 (1988)).

161. 71 N.Y.2d 552, 523 N.E.2d 291, 528 N.Y.S.2d 15 (1988).

162. *Id.* at 557, 523 N.E.2d at 293, 528 N.Y.S.2d at 17.

entry;" therefore, warrantless observations of such were permitted.[163]

Similarly, defendant Edney, traveling from one location to another on public roads, did not have a legitimate expectation of privacy. Under both the State and Federal Constitutions, a protected privacy interest is established only when a person has a subjective expectation of privacy which is recognized by society as reasonable.[164] In addition, the appellate division held that the officers were justified in having seized the paper bag found at defendant's feet — a "grabbable area" — since it was a protective measure against the possibility that the defendant might have gained access to a weapon hidden inside of the bag.[165]

Under article I, section 12 of the New York State Constitution, a warrantless search incident to arrest is unreasonable absent exigent circumstances.[166] The New York Court of Appeals has identified two circumstances under which a warrantless search of property within an arrestee's "immediate control" or "grabbable

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163. *Id.* In *Reynolds*, the police had conducted warrantless ground and aerial observations of defendant's property — fields and woods. *Id.* at 555, 523 N.E.2d at 292, 528 N.Y.S.2d at 16.

164. *See* Katz v. United States, 389 U.S. 347 (1967) (holding electronic eavesdropping equipment placed on outside of public phone booth without a warrant violated defendant's subjective expectation of privacy which society recognizes as a reasonable privacy expectation); People v. Rodriguez, 69 N.Y.2d 159, 505 N.E.2d 586, 513 N.Y.S.2d 75 (1987) (concluding that defendant had no constitutionally recognizable expectation of privacy nor standing to seek suppression of evidence seized in a warrantless search, where defendant was found in someone else's apartment, and he had no legitimate connection to such apartment other than purchasing narcotics there); People v. Mercado, 68 N.Y.2d 874, 501 N.E.2d 27, 508 N.Y.S.2d 419 (1986) (holding that despite individual's reasonable expectation of privacy in public restroom stall, an airport security officer, investigating a tip, and having observed suspicious activity therein, had probable cause to look over partition from adjoining stall); People v. Ponder, 54 N.Y.2d 160, 429 N.E.2d 735, 445 N.Y.S.2d 57 (1981) (holding that one may only challenge a warrantless search if there exists a reasonable expectation of privacy in the object or place searched).

165. *Edney*, 201 A.D.2d at 499-500, 607 N.Y.S.2d at 381.

166. *See* People v. Gokey, 60 N.Y.2d 309, 312, 457 N.E.2d 723, 724, 469 N.Y.S.2d 618, 619 (1983) (citing People v. Smith, 59 N.Y.2d 454, 458, 452 N.E.2d 1224, 1227, 465 N.Y.S.2d 896, 899 (1983)).

area" is justified — when searching for weapons, or when evidence might otherwise be destroyed or secreted.[167]

In *People v. Smith*,[168] the court stated that the reasonableness of an officer's assertion of an exigent circumstance, in order to justify a warrantless search, is to be measured at the time of the defendant's arrest.[169] The court held that the warrantless search of defendant's briefcase was reasonable since it was, "for all practical purposes," conducted contemporaneously with the arrest.[170] Similarly, in the present case, the warrantless search of the paper bag found at defendant's feet took place as the defendant was being arrested and was therefore justified by the officers' need to protect against the possibility that the defendant might have a weapon inside the bag.

The court then addressed the defendant's claim that her conviction must be reversed, pursuant to *People v. Rosario*,[171] because the prosecution failed to disclose police reports relating to the subject matter of witnesses testimony.[172] However, the

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167. *See* People v. Johnson, 59 N.Y.2d 1014, 453 N.E.2d 1246, 466 N.Y.S.2d 957 (1983) (holding warrantless search of defendant's shoulder bag, located two feet away from defendant when arrested, was justified since police reasonably believed defendant might gain access to a weapon because crime reported involved a gun); People v. Smith, 59 N.Y.2d 454, 458, 452 N.E.2d 1224, 1227, 465 N.Y.S.2d 896, 899 (1983) (holding warrantless search of defendant's briefcase was justified since defendant had access to briefcase during search and was wearing bullet proof vest); *cf.* People v. Gokey, 60 N.Y.2d 309, 457 N.E.2d 723, 469 N.Y.S.2d 618 (1983) (holding no exigent circumstances existed to justify warrantless search of defendant's duffel bag since defendant had already been arrested and handcuffed prior to search and police did not suspect defendant to be armed).

168. 59 N.Y.2d 454, 452 N.E.2d 1224, 465 N.Y.S.2d 896 (1983).

169. *Id.* at 459, 452 N.E.2d at 1227, 465 N.Y.S.2d at 899.

170. *Id.*

171. 9 N.Y.2d 286, 173 N.E.2d 881, 213 N.Y.S.2d 448 (1961). The *Rosario* court held that for cross-examination purposes, defense counsel should have been permitted to examine prosecution's witnesses in its entirety. *Id.* at 290, 173 N.E.2d at 883-84, 213 N.Y.S.2d at 451. The court, however, held that denial of such examination was not prejudicial to defendant where there was overwhelming proof of guilt. *Id.* at 291, 173 N.E.2d at 884, 213 N.Y.S.2d at 452.

172. *Edney*, 201 A.D.2d at 499, 607 N.Y.S.2d at 381. The defendant had requested the People turn over police reports concerning the driver of a van,

appellate division held that the defendant's rights were not violated under *Rosario* since the requested police reports were found to be the "duplicative equivalent" of information the People had previously provided to the defendant.[173]

In *People v. Rosario*,[174] the court held that a defendant, upon request, is entitled to examine all prior statements of prosecution witnesses for cross-examination purposes.[175] However, the *Rosario* court found that the defendant in that case was not prejudiced by such denial of statements in their entirety since there was overwhelming evidence of the defendant's guilt.[176] In *People v. Consolazio*,[177] on the other hand, the court held that the turning over of *Rosario* material was not required where the defendant had previously received from the prosecution the "duplicate equivalent" of such statements.[178]

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who was arrested on unrelated charges, in addition to police reports that were relevant to the subject matter of the witness' testimony. The trial court refused both requests. *Id.*

173. *Id.* (citing People v. Consolazio, 40 N.Y.2d 446, 454, 354 N.E.2d 801, 806, 387 N.Y.S.2d 62, 66 (1976), *cert. denied*, 433 U.S. 914 (1977)).

174. 9 N.Y.2d 286, 173 N.E.2d 881, 231 N.Y.S.2d 448 (1961).

175. *Id.* at 289, 173 N.E.2d at 882, 231 N.Y.S.2d at 450. This rule entitles a defendant to examine all statements that relate to the subject matter of the witness' testimony, as long as such testimony does not contain information that must be kept confidential. *Id.*

176. *Id.* at 291, 173 N.E.2d at 884, 213 N.Y.S.2d at 452; *see also* People v. Gaskins, 171 A.D.2d 272, 280, 575 N.Y.S.2d 564, 568 (1991) (citing People v. Jones, 70 N.Y.2d 547, 550, 517 N.E.2d 865, 867, 523 N.Y.S.2d 53, 55 (1987)). The New York Court of Appeals adopted the harmless error standard of review for those situations where the People delay the production of *Rosario* material. *Rosario*, 9 N.Y.2d at 291, 173 N.E.2d at 884, 213 N.Y.S.2d at 452. However, where the People completely fail to comply with the obligation to deliver *Rosario* material, it is reversible error. *Id.*

177. 40 N.Y.2d 446, 354 N.E.2d 801, 387 N.Y.S.2d 62 (1976).

178. *Id.* At issue in *Consolazio* were the prosecution's abbreviated notes which summarized witnesses' responses to questions relating to material issues raised at trial. The court concluded that since the defendant had previously received statements which were the equivalent of these abbreviated notes, such notes need not be turned over to the defendant. *Id.* at 453, 354 N.E.2d at 806, 387 N.Y.S.2d at 66. *Compare with* People v. Young, 79 N.Y.2d 365, 370, 591 N.E.2d 1163, 1166, 582 N.Y.S.2d 977, 980 (1992). The *Young* court held that a "report addendum," which contained results of the officer's further

Under the State Constitution,[179] a warrantless search incident to arrest is unreasonable absent exigent circumstances. The New York Court of Appeals has identified two interests that may justify the warrantless search of property that is within a suspect's "immediate control," — the safety of the public and the officers' conducting the arrest, and the protection of evidence from being destroyed or secreted.[180] In addition, the reasonableness of the officer's actions based on the exigent circumstances is to be measured at the time that the arrest occurred. Furthermore, the warrantless search must be close in time to the arrest.[181]

The Federal Constitution[182] similarly allows warrantless searches to be justified by exigent circumstances.[183] However, the Supreme Court has extended the "grabbable area" to include warrantless searches of any container or compartment of an automobile.[184] In addition, under the federal rule, the police need

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investigation, was not the "duplicative equivalent" of other material defendant had received because a "report addendum" contained additional facts and details not given to the defendant. *Id. See* People v. Gaskins, 171 A.D.2d 272, 274, 575 N.Y.S.2d 564, 564 (1991). The *Gaskin* court held that the transcribed minutes of child sex abuse victim's examination were not the "duplicative equivalent" of a videotaped examination, thus the prosecution's failure to turn over videotaped examination violated *Rosario*. *Id.*

179. N.Y. CONST. art. I, § 12.

180. People v. Gokey, 60 N.Y.2d 309, 312, 457 N.E.2d 723, 724, 469 N.Y.S.2d 618, 619 (1983) (citing People v. Smith, 59 N.Y.2d 454, 458, 452 N.E.2d 1224, 1227, 465 N.Y.S.2d 896, 899 (1983)).

181. *Id.* at 312, 457 N.E.2d at 725, 469 N.Y.S.2d at 619.

182. U.S. CONST. amend. IV.

183. *See* Chambers v. Maroney, 399 U.S. 42 (1970) (warrantless search of automobile at police station justified by exigent circumstances at time of seizure by possibility of disappearance of automobile).

184. New York v. Belton, 453 U.S. 454 (1981). The *Belton* Court held that "the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." *Id.* at 460. In a footnote, the Supreme Court defined "container" as "any object capable of holding another object . . . includ[ing] closed or open glove compartments, . . . or other receptacles." *Id.* However, the court limited its holding only to "the interior of the passenger compartment of an automobile[,]" and stated that it "does not encompass the trunk." *Id.*

not be in fear of their safety or suspect that evidence of a crime will be discovered within the container or compartment to justify a warrantless search.[185]

Both the New York State and Federal Constitution recognize exigent circumstances as justifying warrantless searches incident to arrest. However, the State Constitution dictates that the reasonableness of each search and/or seizure be determined according to the particular facts and circumstances of each case, and therefore, is not as broad as the Federal Constitution.[186] While the state protects against unreasonable searches and seizures to a greater degree by conducting a case by case analysis, the federal rule is perhaps more conducive to uniformity and efficiency since police are given "bright line" rules for distinguishing between permissible and impermissible searches and seizures.[187]

THIRD DEPARTMENT

People v. Pena[188]
(decided November 3, 1994)

Defendant claimed that his state[189] and federal[190] constitutional right to be free from unreasonable searches and seizures was

185. *Smith*, 59 N.Y.2d at 458, 452 N.E.2d at 1226, 465 N.Y.S.2d at 898.

186. *Id.* (citing People v. De Bour, 40 N.Y.2d 210, 222-23, 352 N.E.2d 562, 571, 386 N.Y.S.2d 375, 384 (1976)).

187. *Id.* at 457, 452 N.E.2d at 1226, 465 N.Y.S.2d at 898 (citing Illinois v. Lafayette, 462 U.S. 640, 648 (1983); Dunaway v. New York, 442 U.S. 200, 213-14 (1979); United States v. Robinson, 414 U.S. 218, 235 (1973)).

188. 618 N.Y.S.2d 149 (App. Div. 3d Dep't 1994).

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

190. 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.*