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Search & Seizure

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.*

violated when he was illegally detained and interrogated based on an involuntary consent to search his car.[191] The Appellate Division, Third Department, first ruled that the police officer's conduct was proper in initially stopping the defendant's car, directing the defendant to exit his automobile and running a radio check of the defendant's car.[192] Second, the court held that the "plain view" doctrine was applicable in this situation, where the officer shone a flashlight inside defendant's car and observed marijuana.[193] Finally, the court ruled that the defendant had orally consented to the search.[194] Thus, the court ultimately found that the defendant's right to be free from unreasonable searches and seizures was not violated.[195]

On August 13, 1991, the defendant-driver was pulled over in an automobile by State Troopers Lane and Ernst for driving with a missing license plate light.[196] Lane approached the defendant and asked for his license and registration for the car, whereby the defendant produced his license but did not produce a registration.[197] The defendant told Lane that he did not know who owned the car nor where the registration was located.[198] Lane asked the defendant to exit the car and proceed to the back of the vehicle.[199] Lane returned to the front of the vehicle and spoke with codefendant Hector Pena, who was seated in the back of the car.[200] It was during this time that Lane had shone his flashlight towards the rear floor and observed marijuana.[201] Lane retrieved the marijuana and then asked the defendant-driver, if there was any more in the car to which defendant-driver replied, "'No. . . [g]o ahead and look if you want.'"[202] Codefendant

191. *Pena*, 618 N.Y.S.2d at 151.
192. *Id.*
193. *Id.* at 151-52.
194. *Id.* at 152.
195. *Id.*
196. *Id.* at 150.
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*

Pena also agreed to a search of the car when he responded that there was no other contraband in the car.[203] Both defendants signed written consent-to-search forms, provided by another State trooper.[204] The search uncovered a revolver, protruding from the dashboard, and cocaine obtained from the trunk.[205] Consequently, the defendant was charged and convicted of several criminal offenses.[206] In this appeal, the defendant contended that his motion to suppress should have been granted because the prosecution failed to prove that the consent was voluntary and thus resulted in an illegal detention and interrogation.[207]

In reaching its conclusion that the search and seizure of the vehicle was lawful, the appellate division first ruled that the officer's action leading up to the search was proper.[208] The *Pena* court initially noted that the police conduct of detaining the defendants and requiring the defendant-driver to exit the car was valid based on the fact that the defendant could not produce his registration.[209] The court relied on reasoning in *New York v. Class*,[210] where the Supreme Court held that "officers may, consistent with the Fourth Amendment, exercise their discretion to require a driver who commits a traffic violation to exit the vehicle even though they lack any particularized reason for believing the driver possesses a weapon."[211] Because the defendant was the driver, the court noted that he had an

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203. *Id.* at 150.

204. *Id.* at 150-51.

205. *Id.* at 151.

206. *Id.* The defendant was charged with "criminal possession of a controlled substance in the first degree, criminal possession of a weapon in the third degree, unlawful possession of marijuana and an equipment violation." *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. 475 U.S. 106, 115 (1986) (upholding constitutionality of police search and seizure of weapon, where officer reached into passenger compartment of vehicle to remove objects obstructing the Vehicle Identification Number and observed gun protruding from under car seat).

211. *Id.*

obligation to produce the registration of the vehicle and give the officers information concerning the identity of the vehicle and owner.[212] The court, in *Pena*, further reasoned that by not producing the registration, nor informing the officer as to who owned the vehicle, the officers were permitted to detain the vehicle and its occupants while conducting the investigation.[213]

The *Pena* court further ruled that the radio check conducted by the officers was not unreasonably delayed.[214] "Weighing the degree of intrusion against the precipitating and attending circumstances," the court ruled that the delay for the radio check was reasonable.[215] In support of this conclusion, the court cited *People v. Durgey*,[216] which stands for the proposition that police conduct in detaining a vehicle is measured by the "reasonableness standard, which requires a weighing of the degree of intrusion against the precipitating and attending circumstances."[217] Therefore, the court in *Pena* found that the conduct of the police was proper in stopping and detaining the vehicle and its occupants.[218]

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212. *Pena*, 618 N.Y.S.2d at 151. *See* N.Y. VEH. & TRAF. LAW § 401(4) (McKinney 1986). Section 401(4) provides in pertinent part: "Any . . . police officer may request that the operator of any motor vehicle produce for inspection the certificate of registration for such vehicle and such operator shall furnish . . . any information necessary for the identification of such vehicle and its owner, and all information required concerning his license to operate . . . ." *Id.*

213. *Pena*, 618 N.Y.S.2d at 151. *See* People v. Alexander, 189 A.D.2d 189, 194-95, 595 N.Y.S.2d 279, 283 (4th Dep't 1993) (holding that following a traffic stop, police officers were authorized to detain car and driver to "run a routine license and registration check" after driver had failed to produce a license or registration).

214. *Pena*, 618 N.Y.S.2d at 151.

215. *Id.*

216. 186 A.D.2d 899, 589 N.Y.S.2d 631 (3d Dep't 1992). In *Durgey*, the driver was stopped for speeding and consented to a search of his car. *Id.* at 900, 589 N.Y.S.2d at 633. The police officers discovered a bag of money which was subsequently used as evidence in burglary and criminal possession charges against the defendants. *Id.*

217. *Id.* (citing People v. Sora, 176 A.D.2d 1172, 1173, 575 N.Y.S.2d 970, 972 (3d Dep't 1991)).

218. *Pena*, 618 N.Y.S.2d at 151.

The *Pena* court next analyzed the police search under the plain view doctrine.[219] The court relied on *People v. Sanders*,[220] where the Appellate Division, Second Department, held that subsequent to the police officer observing heroin "in plain view on the front seat of the defendant's vehicle, he had the right to conduct a thorough search of the vehicle for additional contraband and the fruits, instrumentalities, or evidence of the crime in question."[221] The *Pena* court, applying the decision in *Sanders*, determined that the "plain view" doctrine could be applied to the defendant once Lane observed the marijuana in the vehicle.[222]

Furthermore, defendant argued that the police officer's conduct of shining a flashlight into the car was an illegal search.[223] In rejecting the defendant's argument, the court in *Pena* held that Lane was initially authorized to "shine his flashlight into [the vehicle] to observe the car's darkened interior."[224] The court, relying on the decision in *People v. Manganaro*,[225] held that Lane's conduct of flashing a light into the defendant's automobile did not constitute a search.[226]

Finally, the *Pena* court addressed the issue of whether the defendant had voluntarily consented to the search.[227] The court, utilizing the totality of the circumstances test espoused in *People v. Sora*,[228] held that the defendant orally consented to the search

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219. *Id.* at 152.

220. 143 A.D.2d 1063, 533 N.Y.S.2d 639 (2d Dep't 1988).

221. *Id.* at 1063, 533 N.Y.S.2d at 640-41.

222. *Pena*, 618 N.Y.S.2d at 152.

223. *Id.*

224. *Id.* at 151 (citing People v. Cruz, 34 N.Y.2d 362, 370, 314 N.E.2d 39, 44, 357 N.Y.S.2d 709, 715 (1975)).

225. 176 A.D.2d 354, 574 N.Y.S.2d 587 (2d Dep't 1991). In *Manganaro*, the Appellate Division, Second Department, held that the officer's conduct of looking through the window of a parked car was not a search. *Id.* at 355, 574 N.Y.S.2d at 588.

226. *Pena*, 618 N.Y.S.2d at 151-52.

227. *Id.* at 152.

228. 176 A.D.2d 1172, 1174, 575 N.Y.S.2d 970, 972 (3d Dep't 1991) ("[T]he voluntariness of defendant's consent is a question of fact to be determined from the totality of the circumstances . . . [b]ecause 'voluntariness

because he was shown to have understood the English language at the time of the consent and because the consent itself was found to have been voluntary.[229]

This decision is consistent with federal case law. In *Class*, the Supreme Court held that a search of a car is constitutional after being stopped for a traffic violation.[230] In cases where the safety of the officer is compromised, a warrantless search for weapons may be justified "based only on a reasonable suspicion of criminal activity."[231] The Supreme Court noted that because the governmental "intrusion was minimal . . . probable cause stemmed from directly observing [defendant] commit a violation of the law."[232] Furthermore, the United States Supreme Court has recognized the concept that "[i]t is . . . beyond dispute that [a police officer's] action in shining his flashlight to illuminate the interior of [defendant's] car trenched upon no right secured to the latter by the Fourth Amendment."[233] Finally, the Supreme Court has noted that after an officer legally stops a person in a vehicle and sees contraband in "plain view," the officer is permitted to seize the contraband.[234]

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is incompatible with official coercion, actual or implicit, overt or subtle.'" (quoting People v. Gonzalez, 39 N.Y.2d 122, 128, 347 N.E.2d 575, 580, 383 N.Y.S.2d 215, 219 (1976))).

229. *Pena*, 618 N.Y.S.2d at 152.

230. New York v. Class, 475 U.S. 106, 115-16 (1986).

231. *Id.* at 117.

232. *Id.* at 117-18.

233. Texas v. Brown, 460 U.S. 730, 739-40 (1983). *See* United States v. Dunn, 480 U.S. 294, 305 (1987) ("[T]he officers' use of the beam of a flashlight, directed through the essentially open front of respondent's barn, did not transform their observations into an unreasonable search within the meaning of [the] Fourth Amendment.").

234. *See* Coolidge v. New Hampshire, 403 U.S. 443, 472 (1971) (holding that a warrantless search of defendant's car was unconstitutional since the police had ample opportunity to obtain a valid warrant); Chimel v. California, 395 U.S. 752, 762-63 (1969) (discussing elements of plain view doctrine, including limitations that initial intrusion is independently justified and that the discovery of plain view evidence is inadvertent).