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Search & Seizure

SUPREME COURT

QUEENS COUNTY

People v. Medina[326]
(decided June 20, 1994)

The defendant, charged with robbery, claimed that a statement made by him at the precinct shortly after his arrest and subsequent identification testimony should be suppressed based upon a violation of his constitutional rights under the Federal Constitution[327] and the New York State Constitution.[328] The Supreme Court, Queens County, granted the defendant's motion to suppress the statement but denied the defendant's motion to suppress the identification testimony.[329]

The defendant was identified by the victim of the robbery as the perpetrator.[330] According to a detective's testimony at trial, six days later the police went to the defendant's home. When the defendant's thirteen year-old sister answered the door, the

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326. 161 Misc. 2d 484, 615 N.Y.S.2d 254 (Sup. Ct. Queens County 1994).

327. U.S. CONST. amend. IV. The Fourth Amendment provides:

> 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.

328. N.Y. CONST. art. I, § 12. Section 12 provides:

> 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.

329. *Medina*, 161 Misc. 2d at 488, 615 N.Y.S.2d at 257.

330. People v. Medina, N.Y. L.J., June 20, 1994, at 25 (Sup. Ct. Queens County 1994). Portions of the opinion were omitted for publication; however, the omitted portions, including the facts leading up to the defendant's arrest, can be found in the New York Law Journal cited above. The victim identified the defendant by photographs contained at the precinct. *Id.*

detective identified himself as a police officer and asked to speak with the defendant.[331] When the defendant came to the door, the detective told him that he had been identified in a robbery and asked defendant to go to the precinct with him for additional investigation. The defendant agreed and went with the police, unhandcuffed, to the precinct.[332] At the precinct, he was advised that he was under arrest and that he would have to participate in a lineup. After the defendant spoke with his father, he was advised of his *Miranda* rights, which the defendant waived. The defendant thereafter wrote and signed an inculpatory statement. The lineup was then conducted, where the complainant identified the defendant as the man who had robbed him.[333] In contrast, the defendant's thirteen year-old sister claimed that when she opened the door, one officer came into the apartment, while others waited outside, and told her brother that he had to come to the precinct.[334] The defendant claimed that since the police unlawfully entered his home and arrested him in violation of *Payton v. New York*,[335] his statement and the identification testimony must be suppressed. In addition, the defendant claimed that the photographic procedure and lineup were unduly suggestive.[336]

The court held that the police had probable cause to arrest the defendant pursuant to the complainant's photo identification of the defendant.[337] However, the court also suppressed statements

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331. *See Medina*, N.Y. L.J., June 8, 1994, at 25.

332. *Id.*

333. *Id.*

334. *Id.* at 25-26.

335. 445 U.S. 573 (1980) (requiring arrest warrants for routine in-home felony arrests).

336. *See Medina*, N.Y. L.J., June 8, 1994, at 26. The defendant claimed that the pre-trial photo procedure was unduly suggestive because his photograph appeared twice in the three or four books which the complainant reviewed. *Id.*

337. *Medina*, 161 Misc. 2d at 485, 615 N.Y.S.2d at 255. *See* People v. Green, 157 A.D.2d 745, 746, 550 N.Y.S.2d 41, 42 (2d Dep't 1990) (denying defendant's motion to suppress his statement made to law enforcement authorities where his arrest "was based upon a prior photographic identification by a witness to his crime so that probable cause unquestionably

made by the defendant subsequent to his arrest based on a *Payton* violation.[338] In analyzing whether the defendant's arrest was lawful, the court further looked to the "totality of the circumstances,"[339] and found that the "People have [not] met their burden of proving consent [to enter the defendant's apartment] beyond a reasonable doubt."[340] Therefore, this court found that there was a *Payton* violation.[341]

With respect to the admissibility of the defendant's statements, the court examined the decision of *People v. Harris*.[342] In *Harris*, the police developed probable cause to believe that the

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existed"); People v. Montanez, 151 A.D.2d 616, 616, 543 N.Y.S.2d 925, 925 (2d Dep't 1989) (finding that "[u]pon the complainant's selection of the defendant's photograph from the array, the police had probable cause to arrest him").

338. *Medina*, 161 Misc. 2d at 485, 615 N.Y.S.2d at 255.

339. *Medina*, N.Y. L.J., June 8, 1994, at 26. In *Medina*, the court looked at the age of defendant's sister (thirteen), and her "actual or apparent authority to consent to the police entry into the apartment . . . ." *Id. See* People v. Gonzalez, 39 N.Y.2d 122, 130, 347 N.E.2d 575, 582, 383 N.Y.S.2d 215, 221 (1976). In *Gonzalez*, the court ruled that defendants' written consents to search an apartment were involuntary because the totality of facts negated a finding of free will where one defendant resisted arrest outside of the apartment while the other defendant refused to open the door. *Id.*; People v. Zimmerman, 101 A.D.2d 294, 296-297, 475 N.Y.S.2d 127, 128-129 (2d Dep't 1984). In evaluating the "totality of the circumstances," the Appellate Division, Second Department, held that the People met their burden of proving defendant's consent to a police search of the trunk of his daughter's car since the defendant, who had a record of prior arrests, appeared calm and cooperated with the police and upon the officer's request, opened the trunk without hesitation or concern. *Id.*

340. *Medina*, N.Y. L.J., June 8, 1994, at 26. *See* United States v. Matlock, 415 U.S. 164, 177 (1974) (finding that the Government met its "burden of proving by the preponderance of the evidence that [defendant's wife's] voluntary consent to search the east bedroom was legally sufficient to warrant admitting into evidence the $4,995 found in the diaper bag"); *see also* People v. Gonzalez, 39 N.Y.2d at 128, 347 N.E.2d at 580, 383 N.Y.S.2d at 219 (stating that the People have a "heavy burden of proving the voluntariness of the purported consents").

341. *Medina*, 161 Misc. 2d at 485, 615 N.Y.S.2d at 255.

342. 77 N.Y.2d 434, 570 N.E.2d 1051, 568 N.Y.S.2d 702 (1991) (suppressing evidence where defendant was subjected to an illegal arrest and then made an inculpatory statement in his apartment and later at the precinct).

defendant killed his girlfriend. Police went to defendant's home and arrested him without a warrant, in violation of *Payton*.[343] Approximately one hour after his arrest, the defendant admitted again that he committed the murder; this confession was used at trial, where he was convicted of second-degree murder.[344] The appellate division affirmed his conviction[345] and the New York Court of Appeals reversed, stating that the station house confession was the fruit of an illegal arrest and unredeemed by attenuation.[346]

The United States Supreme Court reversed,[347] holding that the police illegality was in the entry, not the arrest, and that exit from the apartment necessarily broke any causal connection between the wrong and the later statement.[348] The Supreme Court, in *Harris*, formulated a *per se* rule of attenuation holding that "where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the

343. *Id.* at 435-36, 570 N.E.2d at 1051, 568 N.Y.S.2d at 702. In *Payton*, the police, acting on probable cause that the defendant murdered a manager of a gas station, broke into defendant's home without a warrant and found a .30 caliber shell casing which was later admitted into evidence at trial. Payton v. New York, 445 U.S. 573, 574 (1983). The United States Supreme Court held "that the Fourth Amendment . . . prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Id.* at 576.

344. *Harris*, 77 N.Y.2d at 436, 570 N.E.2d at 1052, 568 N.Y.S.2d at 703.

345. People v. Harris, 124 A.D.2d 472, 507 N.Y.S.2d 823 (1st Dep't 1986).

346. People v. Harris, 72 N.Y.2d 614, 618-619, 532 N.E.2d 1229, 1231, 536 N.Y.S.2d 1, 3-4 (1991). The court implemented the attenuation analysis of Brown v. Illinois, 422 U.S. 590, 603-04 (1975), which stated that three factors to be considered are: "The temporal proximity of the arrest and the confession, the presence of intervening circumstances, . . . and, particularly, the purpose and flagrancy of the official misconduct . . . ." *Id.* In *Harris*, the New York Court of Appeals, in finding only a brief lapse of time between these two statements, concluded that the station house confession was the fruit of the illegal arrest. 72 N.Y.2d at 621, 532 N.E.2d at 1232-1233, 536 N.Y.S.2d at 5.

347. New York v. Harris, 495 U.S. 14 (1990).

348. *Harris*, 77 N.Y.2d at 436, 570 N.E.2d at 1052, 568 N.Y.S.2d at 703.

statement is taken after an arrest made in the home in violation of *Payton*."[349] The Court, in *Harris*, reasoned that although the entry was unlawful, probable cause did exist for Harris' subsequent custody and removal to the station house, and therefore, the police had justification to question him prior to his arrest.[350]

However, when the United States Supreme Court remanded the *Harris* case to the New York Court of Appeals,[351] the court of appeals did not follow the Supreme Court's new *per se* rule. Rather, the New York Court of Appeals concluded that the federal rule did not go far enough to protect the privacy rights of New York citizens, and decided to apply state constitutional law instead of federal constitutional law.[352] Under New York law, search and seizure and right to counsel law is much more protective of individual rights than under federal law.[353] Thus, New York's broad and unique right to counsel rule requires rejection of the Supreme Court's *per se* rule.

Contrary to the federal system, where a defendant's right to counsel does not attach when an arrest warrant is issued,[354] "in New York once an arrest warrant is authorized, criminal proceedings have begun, the indelible right to counsel attaches

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349. *Harris*, 495 U.S. at 21.

350. *Id.* at 17-18.

351. *Id.* at 21.

352. *Harris*, 77 N.Y.2d at 440, 570 N.E.2d at 1055, 568 N.Y.S.2d at 706. *See* People v. P.J. Video, 68 N.Y.2d 296, 302, 501 N.E.2d 556, 560, 508 N.Y.S.2d 907, 911 (1986) ("Although State courts may not circumscribe rights guaranteed by the Federal Constitution, they may interpret their own law to supplement or expand them."), *cert. denied*, 479 U.S. 1091 (1987)

353. *See P.J. Video*, 68 N.Y.2d at 304, 501 N.E.2d at 561, 508 N.Y.S.2d at 913 (stating that New York "has adopted independent standards under the State Constitution when doing so best promotes 'predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens.'" (citation omitted)).

354. *See* United States v. Pace, 833 F.2d 1307, 1312 (9th Cir. 1987) ("We see no reason in principle why the filing of a complaint should be deemed to give rise to a right to counsel immediately upon arrest pursuant to warrant.").

and police may not question a suspect in the absence of an attorney."[355]

Thus, under federal law, there may be little incentive for the police to follow *Payton* in hopes of obtaining a statement and therefore, the incremental deterrent value coming from suppressing the statement would be minimal.[356] If the police officers wished to interrogate without an attorney present, their chances of doing so would be much greater if they did not obtain an arrest warrant. The New York Court of Appeals, in *Harris*, recognized that New York police "have every reason to violate *Payton*, therefore, because doing so enables them to circumvent the accused's indelible right to counsel,"[357] and a deterrent to such police activity was deemed necessary by the court. The *Harris* court thus reasoned that the police "should not enjoy greater latitude simply because they neglected to obtain a warrant, as *Payton* requires, and entered the apartment illegally."[358]

Therefore, to protect New York citizens from *Payton* violations, the New York State Constitution requires that statements obtained from an accused following an arrest without a warrant in violation of *Payton* must be suppressed unless the taint resulting from the violation has been attenuated.[359] Relying on the history of the *Harris* decision, the *Medina* court suppressed the defendant's statement because the "statement was made shortly after his arrest, and in 'the absence of intervening circumstances', . . . [there was] no attenuation between the *Payton* violation and his statement."[360]

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355. *Harris*, 77 N.Y.2d at 440, 570 N.E.2d at 1054, 568 N.Y.S.2d at 705 (citing People v. Samuels, 49 N.Y.2d 218, 400 N.E.2d 1344, 424 N.Y.S.2d 892 (1980); People v. Settles, 46 N.Y.2d 154, 385 N.E.2d 612, 412 N.Y.S.2d 874 (1978)).

356. *Harris*, 77 N.Y.2d at 440, 570 N.E.2d at 1054-55, 568 N.Y.S.2d at 705-06.

357. *Id.* at 440, 570 N.E.2d at 1055, 568 N.Y.S.2d at 706.

358. *Id.*

359. *Id.* at 441, 570 N.E.2d at 1055, 568 N.Y.S.2d at 706.

360. People v. Medina, 161 Misc. 2d 484, 486, 615 N.Y.S.2d 254, 255 (Sup. Ct. Queens County 1994).

With respect to the admissibility of the complainant's identification testimony, the *Medina* court had to first determine whether the holding in *Harris* applied to lineups.[361] The court recognized that there was much support for not applying the decision in *Harris* to lineups. In *People v. Murray*,[362] the Appellate Division, Second Department, held that, although there was an illegal arrest, the defendant's statements made at the precinct and the identifications made by the victims would not require suppression because the police had probable cause to arrest the defendant.[363]

The court in *Medina* held that the *Harris* holding did not apply to lineups conducted after *Payton* violations.[364] Even if *Harris* did apply, the court found that the People have established that the lineup was attenuated from the legal entry.[365] The *Medina* court reasoned that the lineup identification did not result from the illegal police conduct in entering the defendant's apartment and therefore was not the "fruit of an unlawful arrest."[366] The police obtained the photo identification prior to the *Payton* violation,[367] thus giving them probable cause to arrest the defendant. The court held that the "lineup 'flowed directly' from

361. *Id.* at 486, 615 N.Y.S.2d at 255-56. If the *Harris* holding did apply, the "lineup could be found admissible only if it was not the 'product of the illegality,'" since defendant's right to counsel started with the illegal entry. *Id.* If the *Harris* holding did not apply, then the case has to be "decided as 'a pure Fourth Amendment search and seizure dwelling protection case . . . and no attenuation would be necessary . . . .'" *Id.* (citation omitted).

362. 169 A.D.2d 843, 565 N.Y.S.2d 212 (2d Dep't 1991).

363. *Id.* at 844, 565 N.Y.S.2d at 214.

364. *Medina*, 161 Misc. 2d at 487, 615 N.Y.S.2d at 256.

365. *Id.*

366. *Id. See* People v. Hunt, 155 A.D.2d 957, 595, 547 N.Y.S.2d 968, 969 (4th Dep't 1984) (finding that to constitute a fruit of an illegal arrest the identification must have "flowed directly" from the illegal arrest); *see also* People v. Dodt, 61 N.Y.2d 408, 417, 462 N.E.2d 1159, 1164, 474 N.Y.S.2d 441, 446 (1984) ("Inasmuch as the lineup identification followed directly from the illegal arrest and detention of defendant, it was error to admit evidence of that identification at trial.").

367. *See* People v. Parris, 136 A.D.2d 882, 883, 525 N.Y.S.2d 445, 447 (4th Dep't 1988) (finding that evidence does not have to be suppressed if it is "the product of a source unrelated to defendant's arrest").

the photo identification, an 'independent source,'[368] unrelated to the defendant's illegal arrest, which was in the 'grasp'[369] of the police prior to their illegal entry into the defendant's home, and so is 'sufficiently distinguishable to be purged of the primary taint.'"[370]

The *Medina* court relied on *People v. Pleasant*,[371] where the New York Court of Appeals held that a lineup or in-court identification did not have to be suppressed as a "forbidden fruit" of the defendant's unlawful arrest because a robbery victims' ability to identify defendant was not tainted by the unlawful seizure.[372] In addition, the court noted that, just because an arrest is illegal, "does not automatically result in suppression of any evidence obtained subsequent to arrest."[373] Based on the

368. *Medina*, 161 Misc. 2d at 487, 615 N.Y.S.2d at 256. *See* Wong Sun v. United States, 371 U.S. 471, 487 (1971) (finding that evidence "learned of . . . 'from an independent source'" does not have to be suppressed (citing Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920)).

369. *See* People v. Love, 187 A.D.2d 1030, 591 N.Y.S.2d 111 (4th Dep't 1992). In *Love*, the defendant's photograph used in the photo array was taken before his illegal arrest, and that "the unlawful detention 'yielded nothing of evidentiary value that the police did not already have in their grasp.'" *Id.* at 1030, 591 N.Y.S.2d at 112 (citing United States v. Crews, 445 U.S. 463, 475 (1980)).

370. *Medina*, 161 Misc. 2d at 487, 615 N.Y.S.2d at 256. *See Wong Sun*, 371 U.S. at 488 (stating that the question that needs to be raised is whether the means used to obtain this evidence were "sufficiently distinguishable to be purged of the primary taint").

371. 54 N.Y.2d 972, 430 N.E.2d 905, 446 N.Y.S.2d 29 (1981) (affirming order of Appellate Division which denied defendant's motion to suppress all identification testimony as a result of an illegal arrest), *cert. denied*, 455 U.S. 924 (1982) .

372. *Id.* at 973-974, 430 N.E.2d at 906-907, 446 N.Y.S.2d at 30-31. *See* People v. O'Brien, 178 A.D.2d 617, 577 N.Y.S.2d 492 (2d Dep't 1991). In *O'Brien*, the police had probable cause to arrest the defendant for robbery but a *Payton* violation did occur. However, the court held that the inculpatory statements and lineup identification were "sufficiently attenuated" and were not the product of the illegal arrest. *Id.* at 618, 577 N.Y.S.2d at 492-493.

373. People v. Allah, 140 A.D.2d 613, 613, 529 N.Y.S.2d 5, 5 (2d Dep't 1988) (finding that "the subsequent lineup identification was not tainted by the photo array . . . and that there was an independent basis for the complainant's identification").

foregoing case law, the *Medina* court upheld the complainant's identification testimony and thus it did not have to be suppressed on *Payton* grounds.[374]

Next, the court had to determine "whether the pre-trial photographic procedure was so unnecessarily suggestive as to taint the later corporeal identification and create a likelihood that the witness' potential in-court identification would be tainted as well."[375] The standard used by the court was the "totality of the circumstances."[376] "The primary evil to be avoided is 'a very substantial likelihood of irreparable misidentification.'"[377]

The court held that the photographic procedure was not unduly suggestive in that the books contained many pictures of male Hispanics of the same approximate age as the defendant.[378] The court also found that just because the defendant's picture appeared twice "does not render it unnecessarily suggestive."[379]

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374. *Medina*, 161 Misc. 2d at 488, 615 N.Y.S.2d at 257.

375. *Medina*, N.Y. L.J., June 8, 1994, at 26. Portions of the opinion were omitted for publication.

376. *See* Stovall v. Denno, 388 U.S. 293, 302 (1967) (finding that "a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it . . ."). In *Stovall*, the Supreme Court examined the surrounding circumstances and found that the showing of the perpetrator to the victim in her hospital room was permissible because the victim was the only one who could possibly exonerate the accused. *Id.*

377. *See* Neil v. Biggers, 409 U.S. 188, 198 (1972). In *Biggers*, the Supreme Court, in finding "no substantial likelihood of misidentification," looked at several factors including; whether the witness was able to view the criminal during the crime, "the witness' degree of attention; the accuracy of the witness' prior description of the criminal; the level of certainty demonstrated by the witness at the confrontation; and the length of time between the crime and the confrontation." *Id.* at 199.

378. *Medina*, N.Y. L.J., June 8, 1994, at 26. *See* People v. Alamo, 157 A.D.2d 608, 550 N.Y.S.2d 627 (1st Dep't 1990). In *Alamo*, the complainant identified the defendant after looking at approximately 100 photographs. The Appellate Division, First Department, affirmed the defendant's conviction of robbery, holding that "[t]he volume of photographs viewed and the scope of the procedure involved militate against the presence of suggestiveness." *Id.* at 608, 550 N.Y.S.2d at 628.

379. *Medina*, N.Y. L.J., June 8, 1994, at 26. *See* People v. Troiano, 198 A.D.2d 385, 385, 603 N.Y.S.2d 328, 329 (2d Dep't 1993) (holding that a

With regard to the lineup, the court found that since the others in the lineup were similar to the defendant in age, skin color and physical characteristics, "it was not unduly suggestive,"[380] did not taint the potential in-court identification, and need not be suppressed.[381]

In conclusion, although the wording of the State and Federal Constitutions is identical, New York's independent body of search and seizure and right to counsel law is much more protective of an individual's rights than the federal law.

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slide viewing was not unduly suggestive just because there were three slides of the defendant among 200 slides); People v. Bolling, 148 A.D.2d 622, 623, 539 N.Y.S.2d 85, 86 (2d Dep't 1989) (finding that where the witness selected more than one picture of the perpetrator, and of the chosen pictures, only the defendant's picture is used in a second array with pictures not seen before, this procedure was not "so impermissibly suggestive as to rise to a very substantial likelihood of irreparable misidentification" because the victim saw the perpetrators' faces for approximately 10 minutes and a different picture of the defendant was used in the second array); People v. Shaw, 145 A.D.2d 515, 515-16, 535 N.Y.S.2d 450, 451 (2d Dep't 1988). Where the victim was first shown approximately 100 photographs and then shown two series of Polaroid photographs, the *Shaw* court found that "the separate showings of the defendant's photograph, without more, were not impermissibly suggestive." *Id.*

380. *See Medina*, N.Y. L.J., June 8, 1994, at 26. *See* People v. Cunningham, 110 A.D.2d 708, 709, 487 N.Y.S.2d 609, 610 (2d Dep't 1985) (finding that lineup was not unduly suggestive because the participants in the line-up were "approximately the same age, height, weight and build as defendant, and had similar skin tones, hairstyles and clothing as he did").

381. *See Medina*, N.Y. L.J., June 8, 1994, at 26.