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Search & Seizure

seizure was impermissible, but the result may be different under the Federal Constitution.

People v. James[416]
(printed December 30, 1994)

Defendant moved to suppress physical evidence[417] and statements obtained in violation of his state constitutional rights against unreasonable searches and seizures[418] and self-incrimination.[419] The Bronx County Criminal Court, in denying defendant's motion to suppress, held that defendant had standing to challenge the police stop of the livery cab.[420] In addition, the court held that the police had probable cause to arrest the defendant.[421] Finally, the court held that defendant's consent to search the car was voluntary.[422]

On April 10, 1993, two police officers, on routine patrol,[423] spotted a livery cab operating with a broken rear brake light.[424] The officers directed the cab driver to pull over to the side of the road.[425] As the cab was approaching a stop, one officer observed the passenger "lean forward, place his arms behind his back and

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police officers, in an attempt to obtain the VIN number from a car after the defendant removed himself from his vehicle, observed and seized a gun underneath the driver's seat).

416. N.Y. L.J., Dec. 30, 1994, at 22 (Crim. Term, Bronx County 11994).

417. *Id.* The evidence obtained by the police included marijuana and a gun, a Walter PPK 380. *Id.*

418. N.Y. CONST. art. I, § 12. Section 12 states 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.*

419. N.Y. CONST. art. I, § 6. Section 6 states in pertinent part: "No person shall . . . be compelled in any criminal case to be a witness against himself . . . ." *Id.*

420. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

421. *Id.*

422. *Id.*

423. *Id.* The officers were in the vicinity of East 161st Street and Melrose Avenue. *Id.*

424. *Id.*

425. *Id.*

then bring them forward."[426] Once the cab stopped, the officers exited their vehicle and defendant exited the cab with his hands in the air stating "I'm just smoking some weed. I'm high on some weed."[427] The officer on the driver's side pointed his flashlight toward the back seat of the cab and saw part of a gun stuffed between the back and seat cushion.[428] Subsequently, the gun was seized and the defendant arrested.[429] As the officers searched defendant incident to his arrest, they recovered a bag of marijuana in the defendant's pants pocket.[430] The cab driver was eventually issued a summons for the violation.[431]

The court in *James* first stated that, according to *People v. Ingle*,[432] police officers who stop a car and detain its occupants have, in effect, seized that car and those occupants, regardless of the length of the detention.[433] In determining whether the police stop was reasonable, the *James* court further relied on *People v. John B.B.*,[434] in which the New York Court of Appeals held that such a determination must be examined in light of an individual's constitutional rights and the state's interest.[435] Further, in *People v. Knight*,[436] the Appellate Division, First Department held that regardless of any issue of privacy, a passenger of a livery cab has

426. *Id.*
427. *Id.*
428. *Id.*
429. *Id.*
430. *Id.*
431. *Id.*
432. 36 N.Y.2d 413, 330 N.E.2d 39, 369 N.Y.S.2d 67 (1975).
433. *Id.* at 418, 330 N.E.2d at 42, 369 N.Y.S.2d at 72.
434. 56 N.Y.2d 482, 438 N.E.2d 864, 453 N.Y.S.2d 158 (1982).
435. *Id.* at 487, 438 N.E.2d at 867, 453 N.Y.S.2d at 161. In response to a series of recent burglaries in a local, remote area, the police utilized a "roving roadblock" for vehicles to ascertain the occupant's identity and to gather information about the burglaries. *Id.* at 486, 438 N.E.2d at 866, 453 N.Y.S.2d at 160. As a result of these roadblocks, the police discovered items in one vehicle which were reported stolen. *Id.* The court held that these stops were "uniform, nonarbitrary and nondiscriminatory and did not violate the defendant's rights against unreasonable searches and seizures." *Id.* at 488-89, 438 N.E.2d at 867, 453 N.Y.S.2d at 161.
436. 138 A.D.2d 294, 526 N.Y.S.2d 102 (1st Dep't 1988).

standing to challenge a police stop.[437] Thus, the court in *James* relied on the *Knight* decision and ruled that the defendant had standing.[438] The court further recognized that pursuant to the decision in *People v. Millan*,[439] defendant had standing to challenge the police seizure of the gun as well.[440]

The second issue the *James* court considered was whether the police stop of the cab based on a traffic violation was lawful.[441] In *Ingle*, the New York Court of Appeals held that a police officer may stop a car when there is a traffic violation or when the police have a reasonable suspicion that there has been criminal activity.[442] Because the officers noticed that the cab had a broken tail light, the *James* court ruled that the officers had the right to stop the cab.[443]

Another constitutional issue before the *James* court was whether the officers had probable cause to arrest defendant for possession of the gun and marijuana.[444] The court relied on *People v. Sobotker*,[445] in which the New York Court of Appeals ruled that, before the police can stop someone in a public place, an officer must have reasonable suspicion, which is "the quantum of knowledge sufficient to believe criminal activity is at hand."[446] Furthermore, the court relied on *People v. Carney*,[447] where the New York Court of Appeals ruled that any seizure,

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437. *Id.* at 296, 526 N.Y.S.2d at 104.

438. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

439. 69 N.Y.2d 514, 508 N.E.2d 903, 516 N.Y.S.2d 168 (1987) (rejecting the idea that automobile passengers have no standing to challenge a police search as "offend[ing] fundamental tenets of fairness inherent in New York criminal jurisprudence").

440. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

441. *Id.*

442. *Ingle*, 36 N.Y.2d at 416, 330 N.E.2d at 41, 369 N.Y.S.2d at 71 (1975); People v. Clemente, 195 A.D.2d 300, 600 N.Y.S.2d 12 (1st Dep't 1993) (finding a valid police stop where defendant was passenger in an automobile which had a defective headlight).

443. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

444. *Id.*

445. 43 N.Y.2d 559, 373 N.E.2d 1218, 402 N.Y.S.2d 993 (1978).

446. *Id.* at 564, 373 N.E.2d at 1220, 402 N.Y.S.2d at 996.

447. 58 N.Y.2d 51, 444 N.E.2d 26, 457 N.Y.S.2d 776 (1982).

arising from reasonable suspicion, must be based on "'specific' facts so that its propriety may be measured by the 'detached, neutral scrutiny of a judge.'"[448]

Relying on such precedent, the *James* court stated several reasons why the officers had probable cause to believe that the defendant had unlawfully possessed the gun and drugs. First, defendant quickly exited the cab and admitted to being under the influence of drugs.[449] Second, in light of the automobile assumption, the court noted that it was reasonable for the police to conclude the gun belonged to defendant.[450] Third, the court found that it was reasonable for the police officers to believe that defendant possessed marijuana based on defendant's mental state at the time of search.[451] Based on what the officers knew at the time of the search, the *James* court ruled that probable cause existed to arrest the defendant.[452]

In rejecting defendant's Fourth Amendment claim that the police use of a flashlight constituted a search, the court cited to the United States Supreme Court decision in *Texas v. Brown*.[453] In *Brown*, the Supreme Court held that a search is not being conducted where an officer shines a flashlight into the window of an automobile.[454] Furthermore, in *Millan*, the New York Court of Appeals upheld similar police conduct as not constituting a search.[455] Thus, the court in *James* held that shining the flashlight was not a search and, thus, the seizure of the gun was lawful under the plain view doctrine.[456]

The plain view doctrine allows law enforcement officials to seize items without a search warrant if three conditions are

448. *Id.* at 57, 444 N.E.2d at 29, 457 N.Y.S.2d at 779 (Fuchsberg, J., concurring) (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

449. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

450. *Id.*

451. *Id.*

452. *Id.*

453. 460 U.S. 730 (1983).

454. *Id.* at 740.

455. *Millan*, 69 N.Y.2d at 519, 508 N.E.2d at 905, 516 N.Y.S.2d at 170 (1987).

456. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

satisfied: the officer is lawfully in a position to view the item; the police have lawful access to the item; and the incriminating nature of the object is immediately apparent.[457] Thus, the court in *James* upheld the seizure of the gun under the plain view doctrine.[458]

Finally, the *James* court ruled that defendant's statement that he was under the influence of drugs was a voluntary statement and was not obtained in violation of defendant's right to counsel.[459] In *People v. Simpson*,[460] the Appellate Division, First Department held that a defendant's statement is voluntary when it is in response to police questioning of another witness which is not meant to induce or provoke the defendant to speak.[461] In *James*, the court noted that defendant spontaneously made the statements before the police had an opportunity to question him.[462] Thus, the court denied defendant's request to suppress the statements.[463]

In the federal courts, a seizure is defined as the application of physical force or "a submission to the assertion of authority."[464] This definition is not as broad as New York's definition, where the defendant need not be physically restrained to be "seized." Under federal law, in order for an individual to having standing to challenge a search or seizure violation, a defendant must demonstrate that he or she has a "reasonable expectation of

457. People v. Diaz, 81 N.Y.2d 106, 110, 612 N.E.2d 298, 301, 595 N.Y.S.2d 940, 943 (1984) (citing Horton v. California, 496 U.S. 128, 129 (1990)).

458. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

459. *Id.*

460. 190 A.D.2d 593, 600 N.Y.S.2d 12 (1st Dep't 1993). In *Simpson*, the defendant was arrested and charged with attempted burglary. *Id.* The defendant spoke up after hearing an officer question a building superintendent about whether the defendant had permission to be on the premises. *Id.* The court held that any statements made were not "the product of custodial interrogation." *Id.*

461. *Id.*

462. *James*, N.Y. L.J., Dec. 30, 1994, at 22.

463. *Id.*

464. California v. Hodari D., 499 U.S. 621, 626 (1991).

privacy" in the area which was searched.[465] The federal court's test for standing is essentially the same as New York's test in that both require a criminal defendant to show a "legitimate expectation of privacy in the invaded place."[466]

Furthermore, the analysis of automobile stops is similar under federal law. In *Delaware v. Prouse*,[467] the Supreme Court engaged in a similar balancing of the state's interest and the intrusion upon the rights of the individual.[468] The purpose of utilizing a balancing test is to ensure the "reasonableness" of police conduct as it relates to private citizens.[469]

The doctrine of plain view has been heavily relied upon by federal courts. The Supreme Court has set out standards for the doctrine of plain view in the case of *Horton v. California*.[470] The doctrine does not increase the scope of the search but it does allow officers to seize evidence which was not the actual target of the search, so long as it satisfies the same three requirements used by the New York courts.

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465. United States v. Salvucci, 448 U.S. 83, 91-92 (1980). This standing test is derived from the Supreme Court's decision in Katz v. United States, 389 U.S. 347 (1967) (outlining the scope of the Fourth Amendment's protection) (Harlan, J., concurring).

466. People v. Ponder, 54 N.Y.2d 160, 166, 429 N.E.2d 735, 737, 445 N.Y.S.2d 57, 59 (1981).

467. 440 U.S. 648 (1979) (holding random stops to check driver's license and registration unconstitutional). In *Prouse*, a patrolman pulled over the defendant to "check the driver's license and registration" because he "saw the car in the area and wasn't answering any complaints, so [he] decided to pull them off." *Id.* at 650-51. The officer smelled smoke as he approached the car and found marijuana on the car floor. *Id.* at 648. The Supreme Court held that the seizure of the marijuana violated defendant's Fourth Amendment rights. *Id.* at 663. The Court found that the legitimate governmental interest in this law enforcement practice was unreasonable and did not outweigh the "intrusion on the individual's Fourth Amendment interests." *Id.* at 654.

468. *Id.*

469. *Id.* at 653-54.

470. 496 U.S. 128 (1990). The police had a warrant to search defendant's home for weapons and proceeds from a robbery. *Id.* at 130-31. While conducting their search, an officer seized a machine gun, two stun guns, and other items linking the defendant to the robbery. *Id.* at 131. However, these items were not listed in the search warrant. *Id.* The Court found no Fourth Amendment violation. *Id.* at 142.

With respect to the issue of probable cause, the Supreme Court held that probable cause is defined as "evidence which would 'warrant a man of reasonable caution in the belief' that a felony has been committed."[471] Similarly, in New York, for police officers to have probable cause for arrest, the officers must first have sufficient knowledge to believe criminal activity is afoot.[472]

For the federal courts, as well as for the courts of New York courts, the seminal case in the area of Fifth Amendment law is *Miranda v. Arizona*.[473] In *Miranda*, the Supreme Court attempted to devise a rule to eliminate much of the physical and mental coercion utilized by law enforcement officials to get suspects to incriminate themselves.[474] The Court's remedy consisted of a set of warnings which must be given to a suspect before custodial interrogation.[475] In *Rhode Island v. Innis*,[476] the

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471. Wong Sun v. United States, 371 U.S. 471, 479 (1963) (citing Carroll v. United States, 267 U.S. 132, 162 (1925)).

472. *See Sobotker*, 43 N.Y.2d 559, 373 N.E.2d 1218, 402 N.Y.S.2d 993 (1978).

473. 384 U.S. 436 (1966). Defendant, a suspect in a kidnapping and rape case, was questioned by two police officers for two hours without being apprised of his right to counsel or his right against self-incrimination. *Id.* at 492. He signed a written confession which contained a typed paragraph to the effect that the confession was voluntary and made with "full knowledge" of all legal rights, including the right against self-incrimination. *Id.* at 491-92. The Court concluded that defendant's signing of this statement did not constitute "the knowing and intelligent waiver required to relinquish constitutional rights." *Id.* at 492.

474. *Id.* at 452 (recognizing use of false lineups and "reverse lineups" to procure confessions from unwary defendants).

475. *Id.* at 444. The decision describes *Miranda* warnings as follows: "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.*

476. 446 U.S. 291 (1980). The police apprehended the defendant who was wanted in the shotgun murder of a taxi driver. He was advised of his Miranda rights and requested to speak with a lawyer. *Id.* at 294. Three officers transported defendant to the police station in a "caged wagon." *Id.* En route, two of the officers made statements to each other such as "there's a lot of handicapped children running around in this area, and God forbid one of them might find a weapon with shells and they might hurt themselves" and "it would

Supreme Court elaborated as to what constitutes interrogation for the purposes of requiring *Miranda* warnings. The *Innis* court held that interrogation refers to express questioning and "any words or actions on the part of the police . . . that the police should know is reasonably likely to elicit an incriminating response from the suspect."[477]

Many of the principles of unreasonable searches and seizures and self-incrimination are similar in both the federal courts and the New York State courts. Although there are some differences in their interpretation and application, both court systems promote the same policy objectives: protecting the privacy of all citizens against arbitrary intrusion by the government and preventing coerced statements due to illegal action on the part of law enforcement officials. Therefore, the outcome under federal law would most likely be the same as decisions made by New York courts.

CRIMINAL COURT

KINGS COUNTY

People v. Thomas[478]
(printed September 12, 1994)

The defendant filed a motion to suppress physical evidence, alleging that the police officers who gathered the evidence did not have reasonable suspicion of either the commission of an unlawful act, or the presence of danger to justify the search of the defendant's knapsack.[479] The defendant claimed that seizure of his knapsack and the automatic weapon found therein violated

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be too bad if [a child] would pick up the gun, maybe kill herself." *Id.* at 294-95. Defendant interrupted the officers and told them to let him lead them to the gun. *Id.* at 295. The Court held that this conversation between the officers did not constitute express or implied questioning. *Id.* at 291.

477. *Id.* at 301.

478. N.Y. L.J., Sept. 12, 1994, at 32 (Crim. Ct. Kings County).

479. *Id.*