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Search & Seizure

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.*

his constitutional rights against unreasonable searches and seizures.[480] The defendant's claim falls under both the New York State Constitution[481] and the United States Constitution.[482] The Criminal Court, Queens County, granted the defendant's motion to suppress and held that the police officers did not establish the requisite suspicion to justify the arrest of the defendant.[483] The court, therefore, concluded that the physical evidence obtained was a result of unlawful police conduct.[484]

While on patrol in Kings County, police officers Falconite and Canny observed a car cross the double yellow lines and make a left turn without signaling.[485] After they noticed these infractions, the officers stopped the vehicle.[486] Officer Falconite approached on the left side of the car and asked the driver for his license, registration, and insurance card while Officer Canny approached on the passenger side of the car.[487] While Officer Falconite was speaking with the driver, he observed the defendant in the rear seat on the right side of the vehicle.[488] Upon learning that the driver did not have a valid drivers license, Officer Falconite testified that he opened the left rear door to tell

480. *Id. See* Mapp v. Ohio, 367 U.S. 643, 660 (1961) (holding that evidence illegally obtained by state officials is not admissible in state trial as Fourth Amendment protection is applied to the states through the Fourteenth Amendment).

481. N.Y. CONST. art. I, § 12. This provision 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.*

482. U.S. CONST. amends. IV, XIV. 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.* The Fourteenth Amendment provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." *Id.*

483. *Thomas*, N.Y. L.J., Sept. 12, 1994, at 32.

484. *Id.*

485. *Id.*

486. *Id.*

487. *Id.*

488. *Id.*

the passenger that the vehicle was not a licensed livery cab.[489] The officer then observed what appeared to be a black knapsack on the rear floor of the vehicle and subsequently ordered the defendant to exit from the motor vehicle.[490] As the defendant exited the vehicle, the officer grabbed the knapsack.[491] In response, the defendant turned to the officer and demanded the return of his bag.[492] According to Officer Falconite's testimony, he handcuffed the defendant as the defendant attempted to take his knapsack.[493] He further testified that the knapsack opened and he recovered a semi-automatic pistol with six bullets in the weapon's clip.[494]

In determining whether the search conducted was constitutional, the court relied on several New York State decisions. In *People v. Woods*,[495] the Appellate Division, Second Department held that a police officer may stop a motor vehicle if there is a showing that the officer observed a violation of the Vehicle and Traffic Law or that the occupants have been or will engage in criminal activity.[496] Further, the New York Court of

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489. *Id.* On cross examination, the officer's testimony was impeached by use of his Grand Jury testimony, in which the officer testified that he opened the door of the vehicle for safety reasons. *Id.*

490. *Id.*

491. *Id.* The officer testified that the knapsack felt heavy as he lifted it with his right hand, and in cradling the bag with his other hand, he felt what seemed to be a firearm in a holster. *Id.*

492. *Id.*

493. *Id.*

494. *Id.*

495. 189 A.D.2d 838, 592 N.Y.S.2d 748 (2d Dep't 1993).

496. *Id.* at 841, 592 N.Y.S.2d at 750. Despite the arresting officer's testimony that he had followed the vehicle to ascertain the driver's identity, the court held that the defendant's vehicle was stopped based on a traffic violation, namely the officer's observation of the vehicle's tinted windows. *Id.* at 842, 592 N.Y.S.2d at 751. *See* People v. Petti, 182 A.D.2d 720, 720, 582 N.Y.S.2d 270, 271 (2d Dep't 1992) (holding that the police officers were justified in stopping defendant's vehicle since they witnessed numerous Vehicle and Traffic Law violations); People v. Greene, 135 A.D.2d 449, 451, 522 N.Y.S.2d 860, 861-62 (1st Dep't 1987) (holding that absent a reasonable suspicion that defendant was engaged in criminal acts or posed a danger, the forcible detention and frisk of the defendant violated his constitutional rights).

Appeals has held that when a vehicle is stopped, a police officer can lean into a motor vehicle to speak to the occupants[497] as well as direct a driver to step out of the vehicle after a lawful stop.[498] Similarly, in *Pennsylvania v. Mimms*,[499] the United States Supreme Court held that a police officer is permitted to order the driver out of a vehicle for questioning, out of the concern for the police officer's safety.[500]

However, the *Thomas* court held that the present situation required a more substantial basis for the police officers' actions.[501] The court explained that the officers had to establish the presence of "some articulable facts which initially, or during the course of the encounter, established reasonable suspicion that [the defendant was] involved in criminal acts or pose[d] some danger to the officer[s]."[502] Instead, the court in *Thomas* noted an absence of a reasonable suspicion throughout the entire investigation.[503] The court focused on the fact that the defendant made "no overt gestures or comments that would, even by the

497. *See* People v. Vasquez, 106 A.2d 327, 331, 483 N.Y.S.2d 244, 248 (1st Dep't 1984) (stating that leaning into a car to speak to the passenger was not a violation of defendant's rights), *aff'd*, 66 N.Y.2d 968, 969, 489 N.E.2d 757, 758, 498 N.Y.S.2d 788, 789 (1985), *cert. denied*, 475 U.S. 1109 (1986).

498. *See* People v. Robinson, 74 N.Y.2d 773, 774, 543 N.E.2d 733, 733, 545 N.Y.S.2d 90, 90 (holding that directing a driver to exit a lawfully stopped motor vehicle is not a violation of the Fourth Amendment "because [of] the inherent and inordinate danger to investigating police officers . . ."), *cert. denied*, 493 U.S. 966 (1989).

499. 434 U.S. 106 (1977).

500. *Id.* at 110-11. The United States Supreme Court held that the defendant was lawfully detained and the order to exit the vehicle was reasonable, thus, permissible under the Fourth Amendment. *Id. See* Terry v. Ohio, 392 U.S. 1, 21 (1968) (stating that the standard inquires into whether "a man of reasonable caution" would believe the action taken at the moment of the search and seizure was appropriate).

501. *Thomas*, N.Y. L.J., Sept. 12, 1994, at 32.

502. *Id. See* People v. Harrison, 57 N.Y.2d 470, 479, 443 N.E.2d 447, 452, 457 N.Y.S.2d 199, 204 (1982) (holding that a "dirty" rental car did not establish the requisite reasonable suspicion of criminal activity).

503. *Thomas*, N.Y. L.J., Sept. 12, 1994, at 32.

farthest stretch of one's imagination, establish a reasonable suspicion of an unlawful act."[504]

In its analysis, the *Thomas* court determined that the "[p]eople failed to establish that the defendant had intentionally abandoned the knapsack since the officer grabbed the bag before the defendant had exited the motor vehicle."[505] In contrast, in *People v. Burns,*[506] the Appellate Division, Second Department held that the police officer's unintentional contact with the defendant's bag justified a search for its contents.[507] Still, the *Thomas* court distinguished the facts in *Burns* from those in the case at bar. The court noted that this case was not a situation in which "a helpful police officer accidentally or unintentionally comes in 'cradling' contact with a container and makes a brief initial contact with its exterior."[508] The *Thomas* court concluded that the "seizure and inspection of [the defendant's] personal effects was a significant invasion of his constitutional right to privacy,"[509] since the officer did not accidentally or unintentionally open the knapsack.[510] Therefore, the court granted the defendant's suppression motion.[511]

Similar to New York case law, the Supreme Court has held that in order to seize an item in plain view, the item must be "suspicious" at the time the officer is viewing the item and that items not suspicious in nature cannot be validly seized.[512] Furthermore, the Supreme Court has ruled, in *New York v. Class,*[513] that when police officers lean into a car to remove papers blocking the Vehicle Identification Number and observe a

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504. *Id.*

505. *Id. See* People v. Scott, 82 N.Y.2d 729, 731, 621 N.E.2d 689, 689, 602 N.Y.S.2d 322, 322 (1993) (holding that defendant abandoned a bag in a taxi when he attempted flight from arresting officer).

506. 182 A.D.2d 633, 582 N.Y.S.2d 234 (2d Dep't 1992).

507. *Id.* at 633-34, 582 N.Y.S.2d at 235.

508. *Thomas*, N.Y. L.J., Sept. 12, 1994, at 32.

509. *Id.*

510. *Id.*

511. *Id.*

512. *See* Texas v. Brown, 460 U.S. 730, 739 (1982).

513. 475 U.S. 106 (1986).

gun, seizure of such weapon is permissible.[514] Thus, even where an officer is justified in leaning into an automobile and informing a driver of a traffic violation, any items noticeable in the car must still be "suspicious" in nature in order for officers to seize such items.

NEW YORK COUNTY

People v. Scarborough[515]
(printed April 28, 1994)

The defendant claimed that his right to be free from illegal searches and seizures was violated under both the New York[516] and United States[517] Constitutions when he was arrested after a "full blown" search of his locker contents.[518] The Criminal Court, New York County, held that the "full blown" search of the defendant's work locker, notwithstanding the defendant's limited consent to a visual inspection, was violative of both the state and federal constitutions.[519] Consequently, the court held that the seizure of property therein was illegal and the evidence should have been suppressed.[520]

On July 30, 1993, while employed as a peace officer by Barneys New York, Special Police Officer Rivera received a telephone call from a confidential informant naming the

514. *Id.* at 109.

515. N.Y. L.J., Apr. 28, 1994, at 29 (Crim. Ct. New York County 1994).

516. N.Y. CONST. art. I, § 12. Article I, § 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.*

517. 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.*

518. *Scarborough*, N.Y. L.J., Apr. 28, 1994, at 29.

519. *Id.*

520. *Id.*