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## Search and Seizure: Boyd v. Constantine

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Boyd v. Constantine<sup>2230</sup>  
(decided April 8, 1993)

Defendant claimed that his right to be free from an unreasonable search and seizure under both the State<sup>2231</sup> and Federal<sup>2232</sup> Constitutions was violated when evidence obtained pursuant to an illegal search and seizure by city police officers was admitted against him at a state police disciplinary hearing after being suppressed in a criminal court.<sup>2233</sup> The New York Court of Appeals held that the exclusionary rule should not be applied in an administrative hearing.<sup>2234</sup> The court employed a deterrence analysis and held that the negligible deterrent effect of the exclusionary rule was outweighed by the benefit to be gained in a determination of the truth in an administrative proceeding against a police officer.<sup>2235</sup>

Defendant, a New York State Police Trooper, was arrested after Buffalo City Police Officers discovered marihuana in his car.<sup>2236</sup> The defendant was charged with unlawful possession of marihuana.<sup>2237</sup> The Buffalo City Court found the search illegal, suppressed the evidence, and dismissed the criminal charges.<sup>2238</sup> However, at a subsequent state police administrative hearing the evidence was admitted, and the hearing officer found the defendant guilty of possessing marihuana and acting in a manner that discredited the state police.<sup>2239</sup> Based upon the

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2230. 81 N.Y.2d 189, 613 N.E.2d 511, 597 N.Y.S.2d 605 (1993).

2231. N.Y. CONST. art. I, § 12 ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . .").

2232. U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . .").

2233. *Boyd*, 81 N.Y.2d at 192, 613 N.E.2d at 512, 597 N.Y.S.2d at 606.

2234. *Id.* at 196, 613 N.E.2d at 514, 597 N.Y.S.2d at 608; *see also* *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that the exclusionary rule prohibits the admission of evidence obtained in violation of the Constitution).

2235. *Boyd*, 81 N.Y.2d at 196, 613 N.E.2d at 514, 597 N.Y.S.2d at 608.

2236. *Id.* at 192, 613 N.E.2d at 511-12, 597 N.Y.S.2d at 605-06.

2237. *Id.* at 192, 613 N.E.2d at 512, 597 N.Y.S.2d at 606.

2238. *Id.*

2239. *Id.*

recommendations of the hearing officer, the Superintendent of the State Police dismissed the defendant from his duties as a police officer based upon the recommendations of the hearing officer.<sup>2240</sup>

The appellate division stated that the police hearing was “based upon evidence obtained through an illegal search and seizure,”<sup>2241</sup> and declared that the exclusionary rule is applicable to administrative hearings.<sup>2242</sup> The New York Court of Appeals reversed and reinstated the determination of the hearing officer,<sup>2243</sup> reasoning that the exclusionary rule need not be applied where there would be a negligible deterrent effect.<sup>2244</sup> Under a deterrence analysis, the *Boyd* court determined that the benefits in preventing a police officer who illegally possessed controlled substances from making future drug-related arrests outweighed any negligible deterrent effects of the exclusionary rule.<sup>2245</sup>

The court conducted the same balancing analysis that it applied in *People v. McGrath*.<sup>2246</sup> In *McGrath*, the New York Court of Appeals did not suppress a defendant’s testimony at a grand jury hearing on a criminal contempt charge even though the questions originated from information obtained from an unlawful wiretap.<sup>2247</sup> The *McGrath* court reasoned that the exclusionary rule’s deterrent effect would not be furthered by the almost non-existent probability that the police, if not already well aware of the suppression that would occur in a criminal case, would be deterred from suppressing of the same evidence in a different civil case.<sup>2248</sup>

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2240. *Id.*

2241. *Boyd v. Constantine*, 180 A.D.2d 186, 188, 586 N.Y.S.2d 439, 440 (4th Dep’t 1992), *rev’d*, 81 N.Y.2d 189, 613 N.E.2d 511, 597 N.Y.S.2d 605 (1993).

2242. *Id.*

2243. *Boyd*, 81 N.Y.2d at 193, 613 N.E.2d at 512, 597 N.Y.S.2d at 606.

2244. *Id.* at 196, 613 N.E.2d at 514, 597 N.Y.S.2d at 608.

2245. *Id.*

2246. 46 N.Y.2d 12, 385 N.E.2d 541, 412 N.Y.S.2d 801 (1978).

2247. *Id.* at 27, 385 N.E.2d at 547-48, 412 N.Y.S.2d at 808.

2248. *Id.* at 32, 385 N.E.2d at 550-51, 412 N.Y.S.2d at 811. The *McGrath* court also noted the intervening act of perjury by the defendant as another

Similarly, the New York Court of Appeals has held that the use of the exclusionary rule should not be automatically applied merely because evidence was found incident to an unlawful arrest.<sup>2249</sup> In *People v. Rogers*,<sup>2250</sup> the court required a nexus between the unlawful arrest and the evidence obtained before the exclusionary rule could be applied.<sup>2251</sup> Additionally, the *Rogers* court insisted on a finding that the suppression of evidence would remove any police motive for unlawful behavior as a commonsense test for use of the exclusionary rule.<sup>2252</sup>

The *Boyd* court distinguished cases where the exclusionary rule was applied in administrative proceedings.<sup>2253</sup> In *Finn's Liquor Shop v. State Liquor Authority*,<sup>2254</sup> state liquor authority inspectors conducted an unlawful search and seizure in violation of the Fourth Amendment and discovered evidence which was sought to be used in a liquor license revocation hearing.<sup>2255</sup> In *Finn's Liquor Shop*, the exclusionary rule was applied to prevent the state from relying on the unlawful acts of its agents to enforce its particular law.<sup>2256</sup>

In his dissent in *Boyd*, Judge Titone criticized the narrow holding of the court and pointed out that it had used the exclusionary rule in an administrative proceeding in *Finn's*

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reason for not applying the exclusionary rule. *Id.* at 32, 385 N.E.2d at 551, 412 N.Y.S.2d at 811.

2249. *See People v. Rogers*, 52 N.Y.2d 527, 535, 421 N.E.2d 491, 494, 439 N.Y.S.2d 96, 99 (1981).

2250. *Id.*

2251. *Id.*

2252. *Id.*

2253. *See Finn's Liquor Shop v. State Liquor Auth.*, 24 N.Y.2d 647, 662-63, 249 N.E.2d 440, 447-48, 301 N.Y.S.2d 584, 594-95 (1969) (consisting of three cases wherein the exclusionary rule prohibited evidence at an administrative hearing when police officers acted as state agents and obtained evidence for use in license revocation hearing); *see also State ex rel. Piccarillo v. New York State Bd. of Parole*, 48 N.Y.2d 76, 83, 397 N.E.2d 354, 358, 421 N.Y.S.2d 842, 846 (1979) (finding the exclusionary rule to be applicable in an administrative parole revocation hearing since it is similar to a criminal action).

2254. 24 N.Y.2d 647, 249 N.E.2d 440, 301 N.Y.S.2d 584 (1969).

2255. *Id.* at 656, 249 N.E.2d at 443-44, 301 N.Y.S.2d at 589.

2256. *Id.*

*Liquor Shop* because of its concern that the rule would otherwise be diluted.<sup>2257</sup> In direct opposition to the majority, Judge Titone claimed that it was indeed foreseeable that a civil lawsuit could result from a criminal prosecution, and that this warranted use of the exclusionary rule to deter official misconduct.<sup>2258</sup>

Similar to New York's use of the balancing test in application of the exclusionary rule, the United States Supreme Court has stated that this rule is not to be used "at all proceedings or against all persons."<sup>2259</sup> Instead, the exclusionary rule should be applied when it can deter unlawful actions by the government,<sup>2260</sup> not when the deterrence would be negligible.<sup>2261</sup> Significantly, the Supreme Court has continued to place emphasis on the deterrent effects of the exclusionary rule as a prerequisite for its use.<sup>2262</sup>

Both New York State and the federal courts do not apply the exclusionary rule in cases of unlawfully obtained evidence if the primary purpose of the rule, deterrence of illegal government action, will not be furthered.

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2257. *Boyd*, 81 N.Y.2d at 197, 613 N.E.2d at 514-15, 597 N.Y.S.2d at 608-09 (Titone, J. dissenting).

2258. *Id.* at 201, 613 N.E.2d at 517, 597 N.Y.S.2d at 611 (Titone, J., dissenting).

2259. *United States v. Calandra*, 414 U.S. 338, 348 (1974). The Court held that evidence seized illegally is admissible in a grand jury proceeding based upon the balancing of the possible "damage to that institution" against the "benefit of any possible incremental deterrent effect." *Id.* at 354; *see also* *United States v. Leon*, 468 U.S. 897, 922 (1984) (stating that the exclusionary rule application is subject to good-faith reliance by police officers on search warrants); *cf.* *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that evidence obtained by an unreasonable search or seizure is excluded).

2260. *Mapp*, 367 U.S. at 660.

2261. *See* *United States v. Janis*, 428 U.S. 433 (1976) (stating that evidence unlawfully seized by state officials in a criminal proceeding can be subsequently used in federal civil tax proceeding because of there being only negligible deterrence).

2262. *See, e.g.,* *Stone v. Powell*, 428 U.S. 465, 486 (1976) (stating that the primary justification for use of the exclusionary rule is to deter government conduct that violates the Fourth Amendment).