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## Search and Seizure: People v. Galak

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People v. Galak<sup>2308</sup>  
(decided February 16, 1993)

Defendant claimed that his right to be free from unreasonable searches and seizures, as guaranteed by the State<sup>2309</sup> and Federal<sup>2310</sup> Constitutions, was violated because the police department policy that governed an inventory search, which resulted in his arrest, failed to promote the objectives for which it was intended and did not properly guard against police abuse.<sup>2311</sup> The court held that the police department procedure was unconstitutional on two grounds.<sup>2312</sup> First, the inventory search, although conducted according to the police department policy, did not culminate in a meaningful inventory of the vehicle's contents.<sup>2313</sup> Second, the policy allowed the searching officer undue discretion.<sup>2314</sup>

Defendant, Galak, was a passenger in a car that was parked near a closed automobile dealership at night.<sup>2315</sup> Upon observing the parked car, Officer William Straub of the Lynbrook Police Department verified the license plate number of the car and determined that the plates did not belong to that vehicle and that the registration was expired.<sup>2316</sup> Once additional officers arrived on the scene, Officer Straub proceeded to question the occupants of the car, including the defendant Galak.<sup>2317</sup> Upon learning that neither the driver nor Galak had a valid driver's license, Officer

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2308. 80 N.Y.2d 715, 610 N.E.2d 362, 594 N.Y.S.2d 689 (1993).

2309. 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 . . .").

2310. 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 . . .").

2311. *Galak*, 80 N.Y.2d at 716, 610 N.E.2d at 363, 594 N.Y.S.2d at 690.

2312. *Id.* at 716-17, 610 N.E.2d at 363, 594 N.Y.S.2d at 690.

2313. *Id.*

2314. *Id.*

2315. *Id.* at 717, 610 N.E.2d at 364, 594 N.Y.S.2d at 690-91.

2316. *Id.*

2317. *Id.*

Straub arrested the driver and impounded the vehicle.<sup>2318</sup> Following the driver's arrest, Officer Straub searched the vehicle and discovered "a dagger, a blackjack and an ignition device in the passenger compartment" which the defendant admitted to owning.<sup>2319</sup> Consequently, the defendant was "charged with two counts of criminal possession of a weapon in the third degree, one count of the sale or possession of master or manipulative keys for motor vehicles and one count of possession of burglar tools."<sup>2320</sup> Thereafter, one of the other officers drove the vehicle to police headquarters, and approximately five hours later Officer Straub executed an inventory report at the station.<sup>2321</sup> In this appeal, the defendant contended that the inventory search exceeded the bounds of reasonableness under both the Fourth Amendment and its New York State counterpart and was therefore violative of both constitutions.<sup>2322</sup>

The court held that although Officer Straub conducted the inventory search pursuant to standard departmental procedure, the search was invalid under both the state and federal constitutions.<sup>2323</sup> The court determined that because of the degree of discretion afforded the officer in conducting the search and the large lag time between the inventory search and the actual actually filling out of the inventory report, the procedure followed by the police failed to meet the constitutional mandates of reasonableness.<sup>2324</sup>

The court explained that for a police department procedure governing inventory searches to be considered "reasonable," it must be "rationally designed to meet the objectives that justify the search in the first place"<sup>2325</sup> and it must "limit the discretion

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2318. *Id.*

2319. *Id.*

2320. *Id.*

2321. *Id.*

2322. *Id.* at 716, 610 N.E.2d at 363, 495 N.Y.S.2d at 690.

2323. *Id.* at 721-22, 610 N.E.2d at 366-67, 495 N.Y.S.2d at 693-94.

2324. *Id.* at 7120-21, 610 N.E.2d at 366, 594 N.Y.S.2d at 693.

2325. *Id.* at 719, 610 N.E.2d at 365, 594 N.Y.S.2d at 692; *see also* Florida v. Wells, 495 U.S. 1, 4 (1990) ("The policy or practice governing inventory searches should be designed to produce an inventory.").

of the officer in the field.”<sup>2326</sup> There are three general objectives that an inventory search is designed to advance: “protecting an owner’s property while it is in custody of the police; insuring police against claims of lost, stolen, or vandalized property; and guarding police and others from dangerous instrumentalities that would otherwise go undetected.”<sup>2327</sup> However, these objectives must be weighed against, an “individual’s expectation of privacy and . . . the risk that the search will exceed the scope of its purposes and intrude without justification on the privacy interests of citizens.”<sup>2328</sup>

In this case the police department search procedure that Officer Straub followed failed to serve the governmental objectives that would justify the search.<sup>2329</sup> As Officer Straub’s testimony at the suppression hearing established, there was a five hour time lapse between the time of the search and the time that the inventory form was actually executed.<sup>2330</sup> Additionally, once the form was filled out it failed to accurately reflect which items were left in the car and which items were returned to the owner.<sup>2331</sup> Thus, inasmuch as the object of an inventory search is to provide a “detailed and carefully recorded inventory” of the contents of a vehicle in order to “protect[] the seized property while it is in police hands and insure[] against claims of loss, theft or vandalism,” the inventory report in this case defeated the very purpose of the inventory search.<sup>2332</sup> The court thus stated that “the procedure was so unrelated to the underlying justification for inventory searches that we have no difficulty finding it to be

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2326. *Id.* at 719, 610 N.E.2d at 365, 594 N.Y.S.2d at 692; *see also Wells*, 495 U.S. at 4 (“The individual police officer must not be allowed so much latitude that inventory searches are turned into ‘a purposeful and general means of discovering evidence of crime.’” (quoting *Colorado v. Bertine*, 479 U.S. 367, 376 (1987))).

2327. *Galak*, 80 N.Y.2d. at 718, 610 N.E.2d at 364-65, 594 N.Y.S.2d at 691-92.

2328. *Id.* at 718, 610 N.E.2d 365, 594 N.Y.S.2d at 692.

2329. *Id.*

2330. *Id.* at 720, 610 N.E.2d at 365-66, 594 N.Y.S.2d at 692-93.

2331. *Id.*

2332. *Id.* at 720, 610 N.E.2d at 366, 594 N.Y.S.2d at 693.

arbitrary and irrational, and the search it generated unreasonable.”<sup>2333</sup>

The search was also found unconstitutional because of the degree of discretion afforded to the searching officer on the scene.<sup>2334</sup> The police department policy was deficient in that it lacked any written instructions to guide the inventory search, and thus left all decisions, and most significantly, decisions regarding what to do with property after the search, to the officer on the scene.<sup>2335</sup> This amount of latitude was excessive and unconstitutional.<sup>2336</sup>

In rendering its decision, the court also relied upon the intended purpose of the Fourth Amendment and its state counterpart, which is to “keep citizens ‘free from arbitrary interference’ by government officials.”<sup>2337</sup> The court noted that if “uncanalized discretion” is given to a searching officer, “there is created not just the possibility but the probability that the search and seizure of a citizen’s personal effects will be conducted inconsistently, subject to caprice and the personal preferences of the individual officers — in short, it will be conducted arbitrarily.”<sup>2338</sup>

In many cases, New York has taken an expansive view of what constitutes reasonableness. For example, in *People v. Zollo*,<sup>2339</sup> the court upheld the search of a clear plastic bag found within a brown paper bag inside defendant’s trunk during the course of an inventory search.<sup>2340</sup> The court stated that “[a]n inventory search

2333. *Id.* at 720-21, 610 N.E.2d at 366, 594 N.Y.S.2d at 693.

2334. *Id.* at 721, 610 N.E.2d at 366, 594 N.Y.S.2d at 693.

2335. *Id.* at 719-20, 610 N.E.2d at 365-66, 594 N.Y.S.2d at 692-93.

2336. *Id.* at 721, 610 N.E.2d at 366, 594 N.Y.S.2d at 693.

2337. *Id.* at 721, 610 N.E.2d at 366, 594 N.Y.S.2d at 693 (citations omitted).

2338. *Id.*

2339. 114 Misc. 2d 1032, 453 N.Y.S.2d 332 (Sup. Ct. Nassau County 1982).

2340. *Id.* at 1033-34, 453 N.Y.S.2d at 333-34. A New York State Trooper saw a car swerving left and right in its lane. *Id.* at 1032, 453 N.Y.S.2d at 333. The vehicle was followed into a gas station. *Id.* at 1033, 453 N.Y.S.2d at 333. The defendant was staggering as he exited from the car, and was unable to stand up on his own. *Id.* Upon request of a license, registration, and insurance,

is a legitimate search. Its purposes are clearly defined. The only logical way that the objective purpose of such a search can be fulfilled is to allow the opening of containers pursuant to the inventory.”<sup>2341</sup>

Similarly, in *People v. Castillo*,<sup>2342</sup> the court sustained an inventory search conducted prior to defendant’s arrest where a state trooper opened a brown lunch bag that he found inside “[a] large green opaque plastic garbage bag” in defendant’s trunk.<sup>2343</sup> The court stated that “[i]nventory searches are judged by reasonableness and here it was reasonable for the officers to search the plastic bag and the paper bag contained therein to inventory any and all items that such bags might contain to protect the police from false claims for missing property.”<sup>2344</sup>

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the defendant revealed an envelope containing “a rental slip, a photocopy of a registration (not in defendant’s name), no license and a large ‘wad’ of money.” *Id.* The defendant was then arrested and told by the trooper that the car was to be impounded and searched. *Id.* The defendant objected to the search. *Id.* The trooper noticed a “strong chemical odor upon opening the trunk” and saw a “brown paper bag sitting upright in the trunk with the top crushed down and open.” *Id.* at 1033, 453 N.Y.S.2d at 333-34. The trooper then noticed that a strong smell was coming from the bag, looked inside it, and saw some clear plastic bags. *Id.* at 1033, 453 N.Y.S.2d at 334. When asked about the contents of the plastic bags, the defendant responded that it was marihuana. *Id.*

2341. *Id.* at 1036, 453 N.Y.S.2d at 335.

2342. 150 A.D.2d 957, 541 N.Y.S.2d 640 (3d Dep’t 1989).

2343. *Id.* at 958, 541 N.Y.S.2d at 641. The defendant was stopped for speeding by a State Trooper and upon request produced a New York learner’s permit. *Id.* at 957, 541 N.Y.S.2d at 641. The passenger in the defendant’s car showed a Puerto Rican license. *Id.* at 957-58, 541 N.Y.S.2d at 641. The trooper was not confident that the passenger’s license allowed defendant to drive in New York so he checked both of their names. *Id.* at 958, 541 N.Y.S.2d at 641. The trooper learned that both of their driving privileges were suspended due to lack of insurance. *Id.* The trooper told the defendant that the car “would have to be towed and that an inventory search was required in accordance with the policy and rules of the State Police.” *Id.* Upon opening the trunk, the trooper discovered “[a] large green opaque plastic garbage bag with dirty dungarees protruding from it.” *Id.* The trooper then untied the bag to find a brown lunch bag which he believed carried cocaine. *Id.* The defendant was then arrested. *Id.*

2344. *Id.* at 959, 541 N.Y.S.2d at 642-43.

Nevertheless, despite the latitude afforded to the concept of reasonableness, the courts have strictly adhered to the requirement that an inventory search be conducted in accordance with standard police procedures in order to be constitutionally acceptable. In *People v. Townsend*,<sup>2345</sup> the court held that an inventory search conducted by an officer of the Auto Investigation Unit while the defendant's car was impounded for being illegally parked, was improper.<sup>2346</sup> In an effort to confirm the VIN number on defendant's car, Officer Voltaggio used a "slim jim" to open the driver's door.<sup>2347</sup> Once inside the car, the officer proceeded to search inside a bag left in the car and then further searched a closed cookie tin inside the bag which contained cocaine.<sup>2348</sup> The court refused to sustain the validity of the inventory search because the officer failed to follow standard procedures.<sup>2349</sup> The court concluded that "Voltaggio's search was neither pursuant to procedures authorized by the Department of Transportation, nor was it an inventory of property in plain

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2345. 152 A.D.2d 515, 544 N.Y.S.2d 349 (1st Dep't 1989).

2346. *Id.* at 517, 544 N.Y.S.2d at 351. The defendant's car was towed to a Department of Transportation pound after it was illegally parked. *Id.* at 515, 544 N.Y.S.2d at 350. The following morning, the defendant arrived at the pound to obtain his car. *Id.* The defendant was then told that due to his unpaid tickets valuing \$2725.00, his car was considered a "scofflaw" car and could be reclaimed only upon payment of the fines. *Id.* Later that day, the defendant paid the fines in full but was unable to obtain the car because of his expired registration. *Id.* The defendant was told that he needed a valid registration in order to reclaim the vehicle. *Id.* The pound staff was put on notice that the defendant's car was "no longer under a 'scofflaw' restraining order." *Id.* Two days later, an officer of the Auto Investigation Unit went to check the defendant's car. *Id.* at 516, 544 N.Y.S.2d at 350. Although he did not see any property in plain view, and the vehicle was not under a "scofflaw" restraining order, the officer opened the car door with a "slim jim" and went inside. *Id.* Once inside the car, the officer saw an open airline bag and looked inside to find a balancing scale. *Id.* The officer then took the bag out of the vehicle to see the remaining contents. *Id.* at 516, 544 N.Y.S.2d at 351. Within the bag was a closed cookie tin which the officer opened and found two clear envelopes of white powder which turned out to be cocaine. *Id.*

2347. *Id.* at 516, 544 N.Y.S.2d at 350.

2348. *Id.* at 516, 544 N.Y.S.2d at 350-51.

2349. *Id.* at 518, 544 N.Y.S.2d at 352.

view and was, therefore, a pretext search conducted without any lawful predicate and wholly improper.”<sup>2350</sup> Likewise, in *People v. Lloyd*,<sup>2351</sup> the court held that by pulling out the rear seat of defendant’s vehicle, the officer failed to act “in accordance with standardized procedures for inventory searches.”<sup>2352</sup>

In *People v. Gonzalez*,<sup>2353</sup> the court of appeals upheld an inventory search of a paper bag that was suspended by wire under the dashboard of an automobile which had been impounded, following defendant’s arrest for driving with a suspended license.<sup>2354</sup> The court stated that “[i]t is settled law that the police may search an impounded vehicle to inventory its contents”<sup>2355</sup> and the court utilized the reasonableness test requiring that the governmental interests involved and the individual’s Fourth Amendment interests be balanced.<sup>2356</sup>

2350. *Id.*

2351. 167 A.D.2d 856, 562 N.Y.S.2d 257 (4th Dep’t 1990).

2352. *Id.* at 857, 562 N.Y.S.2d at 258. Following the stop and proper arrest of defendant, a police officer commenced a car inventory search. *Id.* at 856, 562 N.Y.S.2d at 258. The officer opened the trunk and found drug paraphernalia. *Id.* The inside of the vehicle was then searched and the rear seat was pulled out, which led the officer to discover a “clear plastic bag containing a white rock substance which was later shown to be cocaine.” *Id.* The police officer offered as a justification for pulling out the rear seat that it was done as a part of an investigatory search. *Id.*

2353. 62 N.Y.2d 386, 465 N.E.2d 823, 477 N.Y.S.2d 103 (1984).

2354. *Id.* at 390, 465 N.E.2d at 825, 477 N.Y.S.2d at 105. The defendant was stopped after two police officers saw him turn without signaling and driving without a taillight. *Id.* at 388, 465 N.E.2d at 824, 477 N.Y.S.2d at 104. The defendant told the officers that his driver’s license was suspended. *Id.* The defendant was then arrested for driving with a suspended license and was taken to the police station in a squad car. *Id.* The other officer drove the defendant’s car to the station and in so doing, he observed a “brown bag suspended on a wire from under the dashboard.” *Id.* Upon entering the police station, an inventory search was performed whereby the paper bag was opened and cocaine was discovered inside. *Id.* The defendant was subsequently arrested and charged with criminal possession of a controlled substance in the fifth degree. *Id.* at 388, 465 N.E.2d at 823, 477 N.Y.S.2d at 103-04.

2355. *Id.* at 388, 465 N.E.2d at 824, 477 N.Y.S.2d at 104 (citing *South Dakota v. Opperman*, 428 U.S. 364 (1976)).

2356. *Id.* at 389, 465 N.E.2d at 825, 477 N.Y.S.2d at 104 (citing *Illinois v. Lafayette*, 462 U.S. 640 (1983)).



The federal standard is similar to the New York standard. In *South Dakota v. Opperman*,<sup>2357</sup> an inventory search of a lawfully impounded vehicle which was conducted in accordance with standard police procedures was upheld by the United States Supreme Court as reasonable under the Fourth Amendment.<sup>2358</sup> In reaching its decision, the Court focused on the widespread acceptance of the inventory search as a protective procedure<sup>2359</sup> and the diminished expectation of privacy that one has in an automobile.<sup>2360</sup>

In *Illinois v. Lafayette*,<sup>2361</sup> the Supreme Court upheld a warrantless search of a defendant's shoulder bag, finding that the search was a reasonable exercise of police discretion.<sup>2362</sup> The

2357. 428 U.S. 364 (1976).

2358. *Id.* at 376. A police officer issued a parking ticket to the defendant's vehicle because it was illegally parked. *Id.* at 365. Approximately seven hours later, a second officer issued another ticket for the same reason. *Id.* at 366. The car was inspected and towed to an impound lot. *Id.* A police officer, from outside of the vehicle, saw a watch and other property within the car. *Id.* The officer directed the unlocking and opening of the car door. *Id.* "[U]sing a standard inventory form pursuant to standard police procedures, the officer [then] inventoried the contents of the car, including the contents of the glove compartment, which was unlocked." *Id.* In the glove compartment, marihuana was found and retained by the police. *Id.*

2359. *Id.* at 369-71. The Court stated that:

These caretaking procedures have almost uniformly been upheld by the state courts, which by virtue of the localized nature of traffic regulation have had considerable occasion to deal with the issue. Applying the Fourth Amendment standard of 'reasonableness,' the state courts have overwhelmingly concluded that even if an inventory is characterized as a 'search,' the intrusion is constitutionally permissible.

*Id.* (citations omitted).

2360. *Id.* at 367-68. "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects . . . ." *Id.* at 368 (quoting *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974)).

2361. 462 U.S. 640 (1983).

2362. *Id.* at 648. In response to a call regarding some disturbance, an officer observed the defendant and a theater manager engaged in an quarrel. *Id.* at 641. The defendant was arrested and taken to the police station while carrying a shoulder bag. *Id.* At the police station, the defendant was ordered to empty his pockets. *Id.* The defendant then placed his shoulder bag on the counter, and

Court stated that “it is not ‘unreasonable’ for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures.”<sup>2363</sup>

In *Colorado v. Bertine*,<sup>2364</sup> the Court sustained an inventory search of a backpack found in an impounded van after the driver was arrested for driving while intoxicated since the police followed a standardized procedure and bad faith was not shown.<sup>2365</sup> The Court stated that “[n]othing in *Opperman* or *Lafayette* prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.”<sup>2366</sup>

However, in *Florida v. Wells*,<sup>2367</sup> the Court held that an inventory search of a locked suitcase was not sufficiently regulated to satisfy the Fourth Amendment because “the Florida Highway Patrol had no policy whatsoever with respect to the opening of closed containers encountered during an inventory search.”<sup>2368</sup>

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it was subsequently searched and its contents were removed. *Id.* at 642. Ten amphetamine pills were found inside. *Id.*

2363. *Id.*

2364. 479 U.S. 367 (1987).

2365. *Id.* at 375-76. The defendant was arrested for driving while under the influence of alcohol. *Id.* at 368. The contents of the defendant’s van was then inventoried by a backup officer before a tow truck arrived to bring the van to an impoundment lot. *Id.* at 368-69. A backpack was found and opened by the officer who subsequently found “controlled substances, cocaine paraphernalia, and a large amount of cash.” *Id.* at 369. The defendant was then charged with “unlawful possession of cocaine with intent to dispense, sell, and distribute, and unlawful possession of methaqualone,” in addition to driving while under the influence of alcohol. *Id.*

2366. *Id.* at 375.

2367. 495 U.S. 1 (1990).

2368. *Id.* at 5. The defendant was stopped for speeding while driving on a highway. *Id.* at 2. The trooper smelled alcohol on the defendant’s breath and the defendant was arrested for driving under the influence of alcohol. *Id.* The defendant was told that his car would be impounded and was requested to give permission to open the trunk. *Id.* During an inventory search, two marihuana cigarette butts and a locked suitcase were found. *Id.* The trooper directed the

Insofar as New York State adheres to the Supreme Court's rulings on inventory searches, it is clear that the state and federal law equally protect citizens from an unreasonable inventory search and seizure and arbitrary interference by government officials. Thus, unless an inventory search is performed in accordance with the boundaries set by the Fourth Amendment and the recent decisions of the Supreme Court, the search will be invalid under both the state and Federal Constitutions.

People v. Galak<sup>2369</sup>  
(decided July 6, 1993)

The defendant claimed that material seized from a search of his automobile should have been suppressed because it was taken in violation of his state constitutional<sup>2370</sup> rights.<sup>2371</sup> The court held that there was sufficient probable cause for the search and seizure, and the essential relationship between the circumstances of the arrest and the probable cause to search was clearly established.<sup>2372</sup> Consequently, the search and seizure of the defendant's automobile was constitutionally permissible.<sup>2373</sup>

The Auto Crime Division was investigating the defendant because a trail of oil from a stolen car led to his home.<sup>2374</sup> It was discovered that the license plates on the defendant's truck were from a stolen car, and that the truck's Vehicle Identification Number (VIN) belonged to another automobile.<sup>2375</sup> Additionally, while surveilling the defendant's garage, the defendant was

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facility workers to open the suitcase, which revealed a garbage bag which contained marihuana. *Id.* The defendant was charged with possession of a controlled substance. *Id.*

2369. 81 N.Y.2d 463, 616 N.E.2d 842, 600 N.Y.S.2d 185 (1993).

2370. N.Y. CONST. art I, § 12 ("The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . .").

2371. *Galak*, 81 N.Y.2d at 465, 616 N.E.2d at 843, 600 N.Y.S.2d at 186.

2372. *Id.* at 469, 616 N.E.2d at 845, 600 N.Y.S.2d at 188.

2373. *Id.*

2374. *Id.* at 465, 616 N.E.2d at 843, 600 N.Y.S.2d at 186.

2375. *Id.*