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Search and Seizure: People v. Holmes

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and minimally intrusive searches even though that official had less than reasonable suspicion that the student was violating school rules. Under the Federal Constitution's protection against unreasonable searches and seizures, the Supreme Court has held that reasonable suspicion is enough to give rise to a constitutionally valid search of a student. Therefore, the New York standard provides less protection to the student than does the federal standard.

People v. Holmes²⁴⁴³
(decided June 15, 1993)

The state appealed the appellate division's reversal of defendant's criminal conviction for possession of a controlled substance.²⁴⁴⁴ The court of appeals affirmed the appellate division holding that the crack cocaine recovered by police officers during pursuit of the defendant should have been suppressed since it was the result of an illegal seizure.²⁴⁴⁵

A police officer, on car patrol with another officer, observed a bulge in the jacket pocket of defendant, who was among a group congregating in a "known narcotics location."²⁴⁴⁶ As the police car approached the group, the defendant walked away.²⁴⁴⁷ The police officer called the defendant over to the car and as the officer stepped out of the car, the defendant ran.²⁴⁴⁸ The two officers pursued the defendant, who discarded a plastic bag during the chase.²⁴⁴⁹ Subsequently, the defendant was apprehended, and the bag, later found to contain crack cocaine, was recovered.²⁴⁵⁰ Holmes pled guilty to criminal possession of a controlled substance after his motion to suppress the evidence was denied.²⁴⁵¹

2443. 81 N.Y.2d 1056, 619 N.E.2d 396, 601 N.Y.S.2d 459 (1993).

2444. *Id.* at 1057, 619 N.E.2d at 397, 601 N.Y.S.2d at 460.

2445. *Id.* at 1058, 619 N.E.2d at 398, 601 N.Y.S.2d at 461.

2446. *Id.* at 1057, 619 N.E.2d at 397, 601 N.Y.S.2d at 460.

2447. *Id.*

2448. *Id.*

2449. *Id.*

2450. *Id.*

2451. *Id.*

The court of appeals held that the pursuit by the police officers lacked reasonable suspicion and therefore, the evidence obtained as a result of such pursuit should have been suppressed.²⁴⁵² The court held that police pursuit must be justified by a “reasonable suspicion that a crime has been, is being, or is about to be committed.”²⁴⁵³

The court noted that “[f]light, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, could provide the predicate necessary to justify pursuit.”²⁴⁵⁴ However, “[f]light alone, . . . or even in conjunction with equivocal circumstances that might justify a police request for information, is insufficient to justify pursuit because an individual has a right ‘to be let alone’ and refuse to respond to police inquiry.”²⁴⁵⁵

The court reasoned that although Officers Nelthrope and Moynihan had “an objective credible reason to approach [Holmes] to request information . . . ,” no cause existed to justify a far greater intrusion of police pursuit.²⁴⁵⁶ Additionally,

2452. *Id.* at 1058, 619 N.E.2d at 398, 601 N.Y.S.2d at 461.

2453. *Id.* at 1057-58, 619 N.E.2d at 397, 601 N.Y.S.2d at 460; *see also* *People v. Martinez*, 80 N.Y.2d 444, 447, 606 N.E.2d 951, 952, 591 N.Y.S.2d 823, 824 (1992); *People v. De Bour*, 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (1976) (holding that police pursuit constitutes a limited detention and must be justified by a reasonable suspicion that criminal activity has or is about to take place).

2454. *Holmes*, 81 N.Y.2d at 1058, 619 N.E.2d at 397, 601 N.Y.S.2d at 460.

2455. *Id.* at 1058, 619 N.E.2d at 398, 601 N.Y.S.2d at 461 (quoting *People v. May*, 81 N.Y.2d 725, 727-28, 609 N.E.2d 113, 115, 593 N.Y.S.2d 760, 762 (1992)); *see also* *People v. Matienzo*, 81 N.Y.2d 778, 609 N.E.2d 138, 593 N.Y.S.2d 785 (1993) (holding that sufficient grounds for police pursuit existed when police observed defendant transfer small bag for money and fled); *Martinez*, 80 N.Y.2d at 447, 606 N.E.2d at 592 N.Y.S.2d at 824 (holding pursuit valid when flight was combined with police observation of defendant removing a key from a location known for drug storage); *People v. Leung*, 68 N.Y.2d 734, 497 N.E.2d 687, 506 N.Y.S.2d 320 (1986) (holding pursuit valid when officers observed defendant pass a brown envelope resembling that used in drug transactions).

2456. *Holmes*, 81 N.Y.2d at 1058, 619 N.E.2d at 398, 601 N.Y.S.2d at 461 (stating that a mere “bulge” in defendant’s jacket which could be caused by a

the opinion noted that in today's society, many areas have been described as "high crime" or drug locations.²⁴⁵⁷ The court concluded that if the circumstances in the case at hand could justify pursuit, "the right to inquire would be tantamount to the right to seize, and there would, in fact, be no right 'to be let alone.'"²⁴⁵⁸

New York State constitutional law is diametrically opposed to federal constitutional law regarding the "flight exception." In *California v. Hodari D.*,²⁴⁵⁹ the United States Supreme Court held that for a seizure to be effectuated there must be either physical force or a "showing of authority" to which the subject yields.²⁴⁶⁰ Accordingly, if a subject is ordered to stop but refuses, a seizure has not occurred.²⁴⁶¹ Thus, since the pursuit of a fleeing subject is not considered a seizure under federal law, any objects the subject discards during the flight are not "fruit of a seizure," and will be admissible evidence.²⁴⁶²

In sum, the Supreme Court has held that an officer's pursuit of a fleeing individual is not considered a seizure. However, New York courts have held that police pursuit is a sufficient intrusion to fall within the purview of a seizure.²⁴⁶³ Additionally, in New

number of things coupled with defendant fleeing could not justify police pursuit).

^{2457.} *Id.*

^{2458.} *Id.*

^{2459.} 499 U.S. 621 (1991).

^{2460.} *Id.* at 625.

^{2461.} *Id.* at 626.

^{2462.} *Id.* at 629.

^{2463.} However, it should be noted that Justice Bellacosa dissented from the majority opinion. He stated that "[s]omething as elemental as running away from a police officer, after a concededly lawful approach and inquiry should not be rendered per se legally meaningless" *Holmes*, N.Y.2d at 1059, 619 N.E.2d at 399, 601 N.Y.S.2d at 462 (Bellacosa, J., dissenting). Further, he stated that permitting an alleged defendant to be left alone, as the majority held creates a "right to run away." *Id.* (Bellacosa, J., dissenting). Finally, recognizing an individual's right to refuse to cooperate with police officers, the dissent went on to criticize the assumption that flight could be given no significance. *Id.* at 1060, 619 N.E.2d at 399, 601 N.Y.S.2d at 462 (Bellacosa, J., dissenting).

York, pursuit requires more than an objective credible reason.²⁴⁶⁴

People v. Madera²⁴⁶⁵
(decided October 12, 1993)

The state appealed the appellate division's affirmation of the lower court's decision to grant the defendant's motion to suppress evidence, which defendant discarded during a police pursuit.²⁴⁶⁶ In affirming the appellate court's decision, the New York Court of Appeals held that there was a lack of reasonable suspicion to seize the evidence and thus it was properly suppressed as violative of the defendant's state²⁴⁶⁷ and federal²⁴⁶⁸ constitutional rights.²⁴⁶⁹

2464. The levels of intrusion and corresponding levels of suspicion are set forth in *People v. De Bour*, 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (1976). The court in *De Bour* formulated a four-part test to determine whether a seizure is valid. First, the court stated that "[t]he minimal intrusion of approaching to request information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality." *Id.* at 223, 352 N.E.2d at 571-72, 386 N.Y.S.2d at 384. Second, the common law right to inquire "is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain explanatory information, but short of a forcible seizure." *Id.* at 223, 352 N.E.2d at 572, 386 N.Y.S.2d at 385. The third part, which is similar to the *Terry* stop and frisk, is valid "[w]here a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor . . ." *Id.* "Finally, a police officer may arrest and take into custody a person when he has probable cause to believe that person has committed a crime, or offense in his presence." *Id.*

2465. 82 N.Y.2d at 775, 624 N.E.2d 675, 604 N.Y.S.2d 538 (1993).

2466. *Madera*, 82 N.Y.2d at 775, 624 N.E.2d at 675, 604 N.Y.S.2d at 538.

2467. N.Y. CONST. art. I, § 12. This provision states in pertinent part: "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 . . ." *Id.*

2468. U.S. CONST. amend. IV. This provision 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 . . . but upon probable cause . . ." *Id.*

2469. *Madera*, 82 N.Y.2d at 776, 624 N.E.2d at 676, 604 N.Y.S.2d at 539.