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Search and Seizure: People v. Madera

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

People v. Madera[2465]
(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 state[2467] and federal[2468] 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.

While on patrol, two police officers received a radio call stating that there was a fight at a particular location, and one of the participants had a knife.[2470] The officers were given minimal descriptions of the two people involved.[2471] Upon reaching the location, their help was requested at a different location.[2472] After their return to the original destination, the police officers saw three men, none of which resembled the descriptions given to the police.[2473] When the officers approached the men, only the defendant ran away.[2474] The officers then pursued him on foot, during which time the defendant discarded a gun.[2475] Subsequently, the defendant was stopped by the police and charged with criminal possession of a gun.[2476]

The court of appeals, in a memorandum opinion, summarily affirmed the appellate division decision.[2477] The court stated that

> [t]he legal standard is not at issue, but only its application to undisputed facts. Thus, the threshold question for this Court's review is limited to whether the determination of the mixed question of law and fact — lack of reasonable suspicion of criminality to support the police officers' belief for the pursuit action under taken — is supported by this record. Since it is, this Court's review is concluded and the order of the Appellate Division must be affirmed.[2478]

The appellate division held that the defendant's state constitutional rights were violated because the police officers did not have a reasonable suspicion that the defendant had committed or was about to commit a crime.[2479] In addition, the court

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2470. People v. Madera, 189 A.D.2d 462, 463, 596 N.Y.S.2d 766, 767 (1st Dep't), *aff'd*, 82 N.Y.2d at 775, 624 N.E.2d 675, 604 N.Y.S.2d 538 (1993). The radio call was based on an anonymous tip. *Id.*

2471. *Id.*

2472. *Id.* at 463, 596 N.Y.S.2d at 767-68.

2473. *Id.* at 463, 596 N.Y.S.2d at 768.

2474. *Id.*

2475. *Id.*

2476. *Id.* at 463, 596 N.Y.S.2d at 768.

2477. *Madera*, 82 N.Y.2d at 775, 624 N.E.2d 675, 604 N.Y.S.2d 538.

2478. *Id.* at 775, 624 N.E.2d at 675-76, 604 N.Y.S.2d at 538-39 (citations omitted).

2479. *Madera*, 189 A.D.2d at 464-65, 596 N.Y.S.2d at 768-69.

established that flight alone does not "constitute a sufficient basis for a detentive stop . . . ."[2480] The court reasoned that "[r]egardless of whether the police action . . . was justified at its inception, it is plain that the subsequent pursuit of the defendant was not reasonably related in scope to the circumstances upon which it was premised."[2481] Furthermore, "[t]he police had, at most, some basis to approach the defendant for information; they had no reason to suspect him of criminal involvement and, accordingly, no basis to pursue or detain him."[2482]

The appellate division relied on *People v. De Bour*.[2483] The court explained that there are four levels upon which a police-citizen encounter should be evaluated.[2484] The first department

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2480. Id. at 464, 596 N.Y.S.2d at 768; *see also* People v. Howard, 50 N.Y.2d 583, 592, 408 N.E.2d 908, 914, 430 N.Y.S.2d 578, 585 (holding that flight from police "is an insufficient basis for a seizure or for the limited detention that is involved in pursuit"), *cert. denied*, 449 U.S. 1023 (1980).

2481. *Madera*, 189 A.D.2d. at 465, 596 N.Y.S.2d at 769.

2482. *Id.*

2483. 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (1976). In *De Bour*, two police officers were suspicious of the defendant's activities and asked him for identification whereby defendant replied he had none. *Id.* at 213, 352 N.E.2d at 565, 386 N.Y.S.2d at 378. The officers then noticed a "bulge" in the defendant's jacket, and after asking the defendant to unzip his jacket, they discovered a gun and arrested him. *Id.* at 213-14, 352 N.E.2d at 565, 386 N.Y.S.2d at 378. The court held the police conduct was justified and the intrusion was reasonable. *Id.* at 220-21, 352 N.E.2d at 570-71, 386 N.Y.S.2d at 383-84.

2484. *Id.* at 223, 352 N.E.2d at 571-72, 386 N.Y.S.2d at 384-85. The court 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

explained that the broad principles of *De Bour* require that the police conduct must be "justified at its inception" *and* that the action be "'reasonably related' in scope to the circumstances" which rendered its initiation permissible.[2485] The court further stated that the reasoning of *De Bour* shows that police action must be justified from the beginning and during any other subsequent action, even if it does not amount to a seizure as defined by the Fourth Amendment.[2486] The court explained that this is to ensure that all police-citizen encounters are subjected to judicial scrutiny.[2487]

It is evident from New York case law that the *De Bour* decision continues to provide the basis for evaluating police-citizen encounters, and the parameters of what may be admitted as evidence. This line of reasoning was demonstrated in the trial court's decision of the case at hand, *People v. Madera*.[2488] The lower court in *Madera* specifically rejected the application of the recent United States Supreme Court decision of *California v. Hodari D.*,[2489] regarding the definition of a seizure.[2490] The lower court explained there was a contrast between the New York case law and the *Hodari D.* analysis regarding seizures and the admissibility of evidence.[2491] The court stated that New York law has not followed the *Hodari D.* decision because it restricts constitutional liberties.[2492] Instead, the New York court system has applied the protection of the State Constitution.[2493]

Specifically, Supreme Court case law has demonstrated the difference between the Supreme Court's definition of a seizure and the state law definition on which the court in *Madera* relied.

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person when he has probable cause to believe that person has committed a crime, or offense in his presence." *Id.*

2485. *Madera*, 189 A.D.2d at 465, 596 N.Y.S. at 769 (quoting *De Bour*, 40 N.Y.2d at 215, 352 N.E.2d at 566, 386 N.Y.S.2d at 379).

2486. *Id.* at 465, 596 N.Y.S.2d at 769.

2487. *Id.*

2488. 153 Misc. 2d 366, 580 N.Y.S.2d 984 (Sup. Ct. Bronx County 1992).

2489. 499 U.S. 621 (1991).

2490. *Madera*, 153 Misc. 2d at 370, 580 N.Y.S.2d at 987.

2491. *Id.*

2492. *Id.*

2493. N.Y. CONST. art. I, § 12.

The Supreme Court, in *Hodari D.*, limited the definition of a seizure by stating it can only occur when a person submits to a show of authority or when a governmental agent applies physical force.[2494] Since the defendant did not submit to the show of authority, the Court reasoned that the defendant was not seized until he was tackled.[2495] The Court held the seizure was lawful, and the evidence procured during the pursuit was admissible.[2496] This recent decision has severely limited the definition of a seizure which was previously applied by the Supreme Court. Prior to the decision in *Hodari D.*, a reasonable person test was used by the Court to assess police-citizen encounters.[2497]

In conclusion, federal decisional law regarding the onset of a seizure is dramatically different than that of New York law. Specifically, the *De Bour* decision, which is followed by the court in *Madera* provides greater protection to the defendant in police-citizen encounters than does the decision in *Hodari D.* Thus, the *De Bour* four-tier analysis provides judicial scrutiny to all police-citizen encounters, while federal law only applies judicial scrutiny if the police officer exerts physical force, or the defendant submits to a show of authority.

2494. *Hodari*, 499 U.S. at 626. The defendant and other youths fled when they observed police officers approaching in an unmarked car. *Id.* at 622-23. The officers chased the defendant, during which he discarded crack-cocaine. *Id.* at 623. Subsequently, the officers apprehended and handcuffed the defendant. *Id.*

2495. *Id.* at 629.

2496. *Id.*

2497. *See, e.g.*, United States v. Mendenhall, 446 U.S. 544 (1980) (holding that a reasonable person would objectively believe his movement was restricted due to a show of authority by a police officer); Florida v. Royer, 460 U.S. 491, 554 (1983) (holding that a seizure occurred because a show of authority would allow an individual to reasonably believe his movement was restrained); I.N.S. v. Delgado, 446 U.S. 210, 218 (1984) (holding the administering of factory surveys by I.N.S. agents to employees of a factory did not constitute a seizure); Michigan v. Chestnut, 486 U.S. 567, 575 (1988) (holding a police official's conduct of driving a car parallel to defendant did not constitute a seizure because a reasonable person would not feel his liberty was restrained).