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Touro Law Review

Volume 10 | Number 3

Article 80

1994

Search and Seizure: People v. Martinez

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Recommended Citation

(1994) "Search and Seizure: People v. Martinez," *Touro Law Review*. Vol. 10 : No. 3 , Article 80.
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol10/iss3/80>

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People v. Martinez²⁴⁹⁸
 (decided December 21, 1992)

Defendant appealed the denial of his motion to suppress incriminating evidence, arguing that it was obtained via a warrant issued without the required probable cause.²⁴⁹⁹ The issue before the court of appeals was whether an affidavit signed by a person as “Confidential Informant,” along with the affidavit of an investigator, may be sufficient under the New York State Constitution²⁵⁰⁰ to establish reliability of an informant, thereby creating probable cause for a court to issue a search warrant.²⁵⁰¹ The court of appeals reversed the decisions of the appellate division and the trial court, and held “that the probable cause necessary for the issuance of a search warrant is lacking where the application for the warrant is supported by the affidavit of a confidential informant who has not been questioned by the issuing court and whose reliability has not been established.”²⁵⁰²

On September 21, 1987, the confidential informant contacted an investigator of the Schenectady Police Department regarding an opportunity to purchase drugs from the defendant, whose residence had been under investigation by the police for illegal drug activity.²⁵⁰³ The informant consented to purchasing drugs from the defendant’s residence, and she subsequently returned to the police with seven grams of cocaine.²⁵⁰⁴ Although the informant alleged receiving the cocaine from the defendant, it was not a “controlled buy” since the informant was not

2498. 80 N.Y.2d 549, 607 N.E.2d 775, 592 N.Y.S.2d 628 (1992).

2499. *Id.* at 550, 607 N.E.2d at 776, 592 N.Y.S.2d at 629.

2500. N.Y. CONST art. 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, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id.

2501. *Id.* at 550, 607 N.E.2d at 776, 592 N.Y.S.2d at 629.

2502. *Id.* at 552, 607 N.E.2d at 776-77, 592 N.Y.S.2d at 629-30.

2503. *Id.* at 550-51, 607 N.E.2d at 776, 592 N.Y.S.2d at 629.

2504. *Id.* at 551, 607 N.E.2d at 776, 592 N.Y.S.2d at 629.

accompanied by the police, and the informant did not bring money to purchase the drugs.²⁵⁰⁵

Following these events, the police made an application for a search warrant which would allow them to conduct a search of the defendant's apartment.²⁵⁰⁶ The application was supported by affidavits of the investigator and the informant.²⁵⁰⁷ The investigator's affidavit described meeting with the informant and the alleged purchase from the defendant.²⁵⁰⁸ One of the informant's affidavits reiterated the information set forth in the investigator's affidavit, and the second affidavit indicated where the drugs would be and the time that they would be there, as well as the ongoing drug activity at the defendant's home.²⁵⁰⁹ Thereafter, a warrant was issued and executed without the judge questioning the informant.²⁵¹⁰ As a result, a search was conducted of defendant's residence and cocaine was seized.²⁵¹¹

Subsequently, the defendant moved to suppress the seized drugs, which was denied by the hearing court,²⁵¹² and affirmed by the appellate division.²⁵¹³ First, the appellate division reasoned that the police knew the identity of the informant and, if necessary, could produce her before the court issuing the warrant.²⁵¹⁴ Second, there was sufficient probable cause satisfying the *Aguilar-Spinelli*²⁵¹⁵ test from the facts alleged in

2505. *Id.*

2506. *Id.*

2507. *Id.*

2508. *Id.*

2509. *Id.*

2510. *Id.*

2511. *Id.*

2512. *Id.*

2513. *Id.*; see also *People v. Martinez*, 169 A.D.2d 340, 572 N.Y.S.2d 946 (3d Dep't 1991).

2514. *Martinez*, 80 N.Y.2d at 551, 607 N.E.2d at 776, 592 N.Y.S.2d at 629.

2515. See *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1969). This test, adopted from a combination of these two cases, sets forth a two-prong test to be used to determine whether sufficient probable cause existed to issue a search warrant. The *Aguilar-Spinelli* rule was adopted definitively by the New York Court of Appeals in *People v. Griminger*, 71 N.Y.2d 635, 638, 524 N.E.2d 409, 410, 529 N.Y.S.2d 55,

the affidavits.²⁵¹⁶ Third, the statements were acknowledged by the informant.²⁵¹⁷

The court of appeals, however, disagreed with the conclusion of the appellate division and reversed the decision.²⁵¹⁸ It found there was no probable cause for a search warrant because the reliability of the informant was not adequately established.²⁵¹⁹ The court applied the *Aguilar-Spinelli* two-prong test, as adopted by the *Griminger* court, and found that the reliability prong had not been satisfied.²⁵²⁰ It concluded that neither the affidavits, nor the conclusions of the issuing court adequately determined the reliability of the confidential informant.²⁵²¹ Specifically, the affidavit of the investigator failed to verify the police department's previous success with the informant; an affidavit of the informant merely reiterated the investigator's affidavit; "and the informant's affidavits [were] signed merely 'Confidential Informant.'"²⁵²² Furthermore, the court concluded that the judge did not have a sufficient basis to issue the warrant because he

56 (1988). The *Griminger* court summarized the test by stating that "the application for a search warrant must demonstrate a showing of (i) veracity or reliability of the source of the information, and (ii) the basis of the informant's knowledge." *Id.* In *Aguilar*, the Court held that an affidavit for a search warrant need not reflect direct personal observation and may be based on hearsay. *Aguilar*, 378 U.S. at 114. However, where this occurs, a magistrate must be made aware of underlying circumstances on which a confidential informant based his conclusions. *Id.* This will enable the magistrate to determine the validity of the informant's conclusion. *Id.* In *Spinelli*, the Court relied heavily on *Aguilar* and held that an affidavit for a warrant must establish underlying circumstances to allow the magistrate the opportunity to evaluate the informant's information. *Spinelli*, 393 U.S. at 418-19. Further, the officer submitting the affidavit for the warrant must provide support for his claim that the confidential informant was credible and his information reliable. *Id.*

2516. *Martinez*, 80 N.Y.2d at 551, 607 N.E.2d at 776, 592 N.Y.S.2d at 629.

2517. *Id.*

2518. *Id.* at 552, 607 N.E.2d at 776-77, 592 N.Y.S.2d at 629-30.

2519. *Id.*

2520. *Id.* at 552, 607 N.E.2d at 777, 592 N.Y.S.2d at 630.

2521. *Id.*

2522. *Id.*

failed to inquire into the warrant application.²⁵²³ The judge must probe into the facts upon which the application for the warrant is based, and must be convinced that there is a reasonable basis for a search warrant to be issued.²⁵²⁴

In *People v. Griminger*,²⁵²⁵ the New York Court of Appeals stated that the two-prong test set forth by *Aguilar v. Texas*²⁵²⁶ and *Spinelli v. United States*²⁵²⁷ would be used to determine whether probable cause existed for a search warrant.²⁵²⁸ This is a bright-line test which requires that “the application for a search warrant must demonstrate to the issuing magistrate first, the veracity or reliability of the source of the information and second, the basis of the informant’s knowledge.”²⁵²⁹ The court explained that this test has proven to be acceptable, and

2523. *Id.*

2524. *Id.* See *People v. Potwora*, 48 N.Y.2d 91, 397 N.E.2d 361, 421 N.Y.S.2d 850 (1979) (holding that the magistrate or judge issuing a search warrant must himself determine from the facts whether probable cause sufficient to order a search warrant exists and may not delegate this duty or defer this decision to anyone else).

2525. 71 N.Y.2d 635, 524 N.E.2d 409, 529 N.Y.S.2d 55 (1988).

2526. 378 U.S. 108 (1964).

2527. 393 U.S. 410 (1969).

2528. *Griminger*, 71 N.Y.2d at 637, 524 N.E.2d at 409-10, 529 N.Y.S.2d at 55-56. In *Griminger*, United States Secret Service Special Agents arrested and interrogated a person, who subsequently signed a writing indicating that defendant kept drugs in his bedroom and attic. *Id.* at 637, 524 N.E.2d at 410, 524 N.Y.S.2d at 56. An agent then filled out an affidavit to obtain a warrant to search defendant’s home. *Id.* The affidavit provided detailed information, including that the person was a confidential informant, that he observed defendant selling drugs and indicated specifically where and the amount of drugs the defendant actually possessed. *Id.* at 637-38, 524 N.E.2d at 410, 529 N.Y.S.2d at 56. Additionally, even though the agent did not personally know the informant, the affidavit stated that the informant was “a person known to your deponent.” *Id.* at 638, 524 N.E.2d at 410, 529 N.Y.S.2d at 56. Furthermore, left out from the affidavit was that this informant was under arrest at the time he provided the agent with the information. *Id.* A warrant was issued and defendant’s house was searched, producing large amounts of drugs, money and “drug-related paraphernalia.” *Id.* Defendant was thus “charged with two counts of criminal possession of marihuana” *Id.*

2529. *Id.* at 639, 524 N.E.2d at 410, 529 N.Y.S.2d at 56.

therefore, should remain the inquiry for determining whether probable cause existed.²⁵³⁰

This two-prong test, however, has been replaced in federal courts by the “totality of the circumstances” approach.²⁵³¹ The United States Supreme Court in *Illinois v. Gates*²⁵³² abandoned the *Aguilar-Spinelli* test because it concluded that it was a rigid, inflexible approach for determining probable cause, which operated to the detriment of law enforcement.²⁵³³

The *Gates* court recognized the importance of determining the reliability of an informant, as well as his basis of knowledge.²⁵³⁴ However, the Court noted that these requirements should not be rigidly applied, but should be viewed as “closely intertwined issues that may usefully illuminate . . . whether there is ‘probable cause’ to believe that contraband or evidence is located in a particular place.”²⁵³⁵

2530. *Id.* at 639, 524 N.E.2d at 411, 529 N.Y.S.2d at 57.

2531. *See Illinois v. Gates*, 462 U.S. 213 (1983) (holding that the totality of circumstances test is more appropriately tailored to the needs of law enforcement and adequately provides for Fourth Amendment protection in a way more easily practiced by the magistrate and hearing court than does the *Aguilar-Spinelli* two-prong test).

2532. *Id.*

2533. *Id.* at 230-31. In *Gates*, the police department received an anonymous letter in the mail stating that a husband and wife were in the business of selling drugs. *Id.* at 225. The letter further provided that the Gates would purchase the drugs in Florida; the wife would drive the car and the husband would fly down and meet her whereupon the two of them would drive back to Illinois after the buy. *Id.* The letter also contained a date of when the next buy would be, as well as the value of the drugs. *Id.* Upon receiving this tip, a police officer corroborated the information through independent investigation. *Id.* at 225-26. In an affidavit for a search warrant the police officer set forth the information contained in the letter together with a copy of the letter and the results of the independent investigation. *Id.* at 226. Many of the predictions on the anonymous letter occurred: Mr. Gates flew into Florida, and the following morning, he and an unknown woman drove from Florida to Chicago and returned to their home. *Id.* at 226-27. The police then searched their trunk and their home, finding a large quantity of marijuana and other contraband. *Id.* at 227.

2534. *Id.* at 230.

2535. *Id.*

In sum, the New York courts find the two-prong test has proven a satisfactory method of ensuring that there is probable cause to issue a warrant. The courts are not persuaded that the totality of the circumstances approach of *Gates* offers an acceptable alternative.²⁵³⁶ Therefore, what may be sufficient to establish probable cause in a federal court may not suffice in a New York State court where the bright-line test of *Aguilar-Spinelli* is required.

People v. Matienzo²⁵³⁷
(decided January 19, 1993)

The defendant claimed that his constitutional rights²⁵³⁸ were violated because the evidence used at trial was illegally obtained.²⁵³⁹ Defendant alleged that police officers at the scene had no grounds to entertain a reasonable suspicion that a crime had been, or was likely to be, committed by the defendant.²⁵⁴⁰ The court of appeals affirmed the appellate division's conviction of the defendant.²⁵⁴¹

A police officer observed defendant standing on a street corner in a well known high crime area in New York City.²⁵⁴² Defendant took a small plastic bag out of a brown paper bag which he gave to another man in exchange for money.²⁵⁴³ In response, the observing officer radioed for assistance, and two

^{2536.} See, e.g., *Griminger*, 71 N.Y.2d at 639, 524 N.E.2d at 411, 529 N.Y.S.2d at 57.

^{2537.} 81 N.Y.2d 778, 609 N.E.2d 138, 593 N.Y.S.2d 785 (1993).

^{2538.} N.Y. CONST. art. I, § 12. Article I, section 12 provides in pertinent part: "The right of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures, shall not be violated" *Id.* U.S. CONST. amend. IV provides in 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.*

^{2539.} *Matienzo*, 81 N.Y.2d at 780, 609 N.E.2d at 139, 593 N.Y.S.2d at 786.

^{2540.} *Id.*

^{2541.} *Id.*

^{2542.} *Id.* at 779, 609 N.E.2d at 138, 593 N.Y.S.2d at 785.

^{2543.} *Id.*