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## Search and Seizure: People v. Matienzo

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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.<sup>2536</sup> 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. Matienzo<sup>2537</sup>  
(decided January 19, 1993)

The defendant claimed that his constitutional rights<sup>2538</sup> were violated because the evidence used at trial was illegally obtained.<sup>2539</sup> 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.<sup>2540</sup> The court of appeals affirmed the appellate division's conviction of the defendant.<sup>2541</sup>

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

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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.*

more officers responded to the area.<sup>2544</sup> When defendant saw the officers, he began to run, subsequently entered a store and threw the brown paper bag away.<sup>2545</sup> The police later recovered the bag and found over 100 vials of cocaine.<sup>2546</sup>

In relying on *People v. De Bour*,<sup>2547</sup> the court of appeals held that “[d]efendant’s street corner activity gave the police an objective, credible reason to approach him.”<sup>2548</sup> Additionally, defendant’s flight upon noticing the officers gave the police reasonable grounds to be suspicious of possible criminal activity and, therefore, the pursuit was justified.<sup>2549</sup> Furthermore, the court held that “[d]efendant’s abandonment of the bag . . . was not in response to unlawful police conduct, and the vials found therein supplied probable cause for defendant’s arrest.”<sup>2550</sup>

In *California v. Hodari D.*,<sup>2551</sup> the United States Supreme Court held that a seizure occurs when one yields to an “application of physical force” or a “show of authority.”<sup>2552</sup> If the individual does not yield, then a seizure cannot be effectuated

2544. *Id.*

2545. *Id.* at 780, 609 N.E.2d at 138, 593 N.Y.S.2d at 785-86.

2546. *Id.* at 780, 609 N.E.2d at 138, 593 N.Y.S.2d at 786.

2547. 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (1976) (“The minimal intrusion of approaching to request information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality.”).

2548. *Matienzo*, 81 N.Y.2d at 780, 609 N.E.2d at 139, 593 N.Y.S.2d at 786.

2549. *Id.*; see also *People v. Martinez*, 80 N.Y.2d 444, 606 N.E.2d 951, 591 N.Y.S.2d 823 (1992). The *Martinez* Court found that defendant’s flight from approaching police officers, by itself, did not justify pursuit of the defendant. *Id.* at 448, 606 N.E.2d at 953, 606 N.Y.S.2d at 825. However, the Court found that reasonable suspicion of criminal activity existed to justify the police pursuit of defendant where, in addition to defendant’s flight, other circumstances were considered, such as “the time, the location, and the fact that defendant was seen removing an instrument known to the police to be used in concealing drugs.” *Id.*

2550. *Matienzo*, 81 N.Y.2d at 780, 609 N.E.2d at 139, 593 N.Y.S.2d at 786.

2551. 499 U.S. 621 (1991).

2552. *Id.* at 626.

for purposes of Fourth Amendment protection.<sup>2553</sup> Therefore, evidence procured when one does not yield to physical force or a show of authority cannot be considered “fruit of a seizure,” because no seizure exists.<sup>2554</sup>

Accordingly, in the case at hand, both New York and Federal law would permit the vials of cocaine found by the police officers to be admitted as evidence, without violating defendant’s constitutional rights.

People v. May<sup>2555</sup>  
(decided December 16, 1992)

Defendant appealed the trial court’s denial of his motion to suppress evidence which he claimed was “the fruit[] of an illegal stop and seizure[,]”<sup>2556</sup> taken in violation of his state<sup>2557</sup> and federal<sup>2558</sup> constitutional rights. The appellate division affirmed the trial court’s decision.<sup>2559</sup> The New York Court of Appeals reversed, holding that the police did not have a reasonable suspicion that criminal activity existed, therefore the evidence obtained from the unconstitutional search should have been suppressed.<sup>2560</sup>

In *May*, defendant was parked with a companion on a deserted street early in the morning in an area known for its high crime activity.<sup>2561</sup> As two police officers, who were patrolling the area, approached the car with their “red turret lights and spotlight on,

2553. *Id.*

2554. *Id.* at 629.

2555. 81 N.Y.2d 725, 609 N.E.2d 113, 593 N.Y.S.2d 760 (1992).

2556. *Id.* at 727, 609 N.E.2d at 114, 593 N.Y.S.2d 761.

2557. 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 . . .”).

2558. 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 . . .”).

2559. *People v. May*, 176 A.D.2d 484, 484, 574 N.Y.S.2d 958, 958 (1st Dep’t 1991).

2560. *May*, 81 N.Y.2d at 728, 609 N.E.2d at 115, 593 N.Y.S.2d at 762.

2561. *Id.* at 727, 609 N.E.2d at 114, 593 N.Y.S.2d at 761.