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Search and Seizure: People v. Monegro

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the cocaine thrown away by the defendant was not obtained as the result of a seizure, and could be used at trial.²⁶²⁵

The state standard is more protective of the defendant because it requires the officer to have “reasonable suspicion” of criminal activity before there can be a constitutional seizure. Under the federal standard, a seizure does not occur unless the police officer actually touches the defendant, or the defendant submits to the officer’s verbal commands. The federal standard provides the police with more leeway than the state standard because a defendant’s act of running away is not considered submission to the officer, and therefore, no seizure exists.

People v. Monegro²⁶²⁶
(decided October 19, 1993)

The court reversed defendant’s conviction of criminal possession of a controlled substance in the second degree.²⁶²⁷ The issue was whether the police pursuit was one in which the warrant requirement could be dispensed with.²⁶²⁸ The court held that the pursuit was unconstitutional and a warrant was required.²⁶²⁹

In this case, there was a “verbal street corner argument” in which the defendant was involved.²⁶³⁰ The defendant left the scene and the officers pursued him, arrested him, and found drugs.²⁶³¹

The court stated that “[a]ll of defendant’s actions . . . were at least as capable of an innocent explanation as of indicating that he

²⁶²⁵. *Id.*

²⁶²⁶. 197 A.D.2d 437, 603 N.Y.S.2d 1 (1st Dep’t 1993).

²⁶²⁷. *Id.* at 437, 603 N.Y.S.2d at 2. *See* 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”); 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”).

²⁶²⁸. *Monegro*, 197 A.D.2d at 437, 603 N.Y.S.2d at 2.

²⁶²⁹. *Id.*

²⁶³⁰. *Id.*

²⁶³¹. *Id.*

was in possession of a weapon or was otherwise engaging in criminal activity.”²⁶³² Since the defendant’s actions were capable of an innocent explanation, the court held that “[i]n these circumstances, defendant’s departure from the scene did not justify the immediate pursuit by the police.”²⁶³³

In reaching its conclusion, the court relied on *People v. Holmes*.²⁶³⁴ In *Holmes*, officers patrolled in a known narcotics location and one of the officers noticed a bulge in the defendant’s pocket.²⁶³⁵ As the officer exited the police car, the defendant fled and the officers ran after him.²⁶³⁶ During the pursuit the defendant discarded a plastic bag which was later recovered by the police and was identified as crack cocaine.²⁶³⁷ In its ruling in favor of suppression of the evidence, the court stated:

While the police may have had an objective credible reason to approach defendant to request information - having observed him in a ‘known narcotics location’ with an unidentified bulge in the pocket of his jacket - those circumstances taken together with defendant’s flight, could not justify the significantly greater intrusion of police pursuit.²⁶³⁸

Holmes and *Monegro*, considered together, indicate that in order for a police pursuit and subsequent recovery of evidence to be justified, there must be more than a mere showing that the defendant’s actions may have been criminal in nature.²⁶³⁹

2632. *Id.*

2633. *Id.*

2634. 81 N.Y.2d 1056, 619 N.E.2d 396, 601 N.Y.S.2d 459 (1993).

2635. *Id.* at 1057, 619 N.E.2d at 397, 601 N.Y.S.2d at 460.

2636. *Id.*

2637. *Id.*

2638. *Id.* at 1058, 619 N.E.2d at 398, 601 N.Y.S.2d at 461.

2639. *See, e.g.,* *People v. Wider*, 172 A.D.2d 573, 568 N.Y.S.2d 141 (2d Dep’t 1991). In *Wider*, the court relied on a radio report, the quick response time of the officers, the observation by the officers of a group of men at a specified location, the matched description of one of the gunmen given in the radio report, and the flight of the defendant in holding the police action justified. *Id.* at 574, 568 N.Y.S.2d at 142.

Although no violation of a federal constitutional right was contended, the leading federal case on this issue is *Terry v. Ohio*.²⁶⁴⁰ The Supreme Court in *Terry* held that

where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.²⁶⁴¹

In comparison, the United States Supreme Court standard is less stringent than the New York standard. According to the Supreme Court standard, as long as the officer acts reasonably, the search of an alleged perpetrator will be lawful. Therefore, although in *Monegro*, the defendant's conduct may have been explained as innocent, nonetheless, a federal court may have determined that the officers responded reasonably. In New York, however, a higher burden must be satisfied in order to justify police pursuit. While the *Monegro* court found that the case did not satisfy the New York standard, a federal court, based on the same or similar facts as in the case at hand, may reach a different result pursuant to *Terry*.

People v. Sierra²⁶⁴²
(decided May 27, 1993)

Defendant appealed the denial of a motion to suppress physical evidence on the ground that the police officers lacked probable

2640. 392 U.S. 1 (1968) (holding that a police officer may "stop and frisk" an individual if reasonable and articulable facts exist that lead to the conclusion that criminal activity may be afoot).

2641. *Id.* at 30.

2642. 190 A.D.2d 202, 599 N.Y.S.2d 6 (1st Dep't), *appeal granted*, 81 N.Y.2d 1082, 619 N.E.2d 681, 601 N.Y.S.2d 603 (1993).