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Search and Seizure: People v. Beriguette

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et al.: Search and Seizure

Even though the court in *Sierra* did not address the Federal Constitution,[2676] it is important to note that the standard for determining whether a seizure has occurred is different under federal law than it is under New York State law. In *California v. Hodari*,[2677] the United States Supreme Court held that for a seizure to occur there must be a show of authority to which the subject yields or an application of physical force to restrain movement.[2678] A seizure occurs where a police officer physically arrests someone or where an individual is arrested by yielding to the police officer's authority.[2679] On the other hand, a seizure does not occur where there is a show of authority to which the subject does not yield.[2680] Therefore, physical evidence, such as drugs, abandoned while the defendant is being pursued by a police officer is admissible into evidence.[2681] Under federal law, because pursuit of a fleeing individual is not considered a seizure, the Fourth Amendment of the Federal Constitution is not controlling.

SECOND DEPARTMENT

People v. Beriguette[2682]
(decided December 27, 1993)

Defendant claimed that his right to be free from unreasonable searches and seizures pursuant to the State[2683] and Federal[2684]

2676. U.S. CONST. amend. IV.

2677. 499 U.S. 621 (1991). In *Hodari*, the police approached several youths who were huddled around a car. *Id.* at 622. Once the youths saw the police approaching they fled and the officers chased them. *Id.* at 622-23. During the chase, one of the youths discarded cocaine which the officer seized. *Id.* at 623. Subsequently, he arrested defendant. *Id.* The Court held that the defendant was not seized when he discarded cocaine and, therefore, the evidence was admissible and not subject to the exclusionary rule. *Id.* at 629.

2678. *Id.* at 625.

2679. *Id.*

2680. *Id* at 629.

2681. *Id.*

2682. ___ A.D.2d ___, 605 N.Y.S.2d 759 (2d Dep't 1993)

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Constitutions was violated when the police conducted a search of his automobile without his voluntary consent and without probable cause to conduct a warrantless search.[2685] The court held that defendant's constitutional right was not violated since defendant had voluntarily consented to police's search of his car. Additionally, the court held the search did not fall within the protections guaranteed by the State and Federal Constitutions because the car's interior was in "plain view."[2686] Furthermore, the court held that the record supported the finding that the police had probable cause to conduct the search.[2687]

Defendant's live-in girlfriend filed a complaint of assault against the defendant with the Yonkers Police Department.[2688] Police testimony indicated that her face was swollen.[2689] She also notified the police that she went to a friend's house after the incident at which time defendant telephoned her, and threatened to shoot her.[2690] The complainant and several officers went to her apartment where she informed the police that, if defendant's gun was not in the apartment, it might be in the defendant's car, which was parked on the street outside the apartment

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2683. N.Y. CONST. art. I, § 12. This provision states in relevant 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.

2684. U.S. CONST. amend. IV. This provision states:

> 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.

2685. *Beriguette*, ___ A.D.2d ___, 605 N.Y.S.2d at 760.
2686. *Id.* at ___, 605 N.Y.S.2d at 761.
2687. *Id.* at ___, 605 N.Y.S.2d at 761.
2688. *Id.* at ___, 605 N.Y.S.2d at 760.
2689. *Id.* at ___, 605 N.Y.S.2d at 760.
2690. *Id.* at ___, 605 N.Y.S.2d at 760.

building.[2691] When defendant opened the apartment door, complainant identified him as her boyfriend and the police then arrested him, administering the *Miranda* warnings.[2692]

Subsequent to the arrest, the police conducted a search of the defendant, during which keys fell out of defendant's pants.[2693] At two different times, the police asked for the defendant's permission to search his car, and both times defendant consented to the search.[2694] A police officer then approached defendant's car and used a flashlight to look inside.[2695] On the front seat of the car, in plain view, was a bag containing what the officer thought might be heroin.[2696] The officer used defendant's keys to enter the car and seize the bag.[2697] A subsequent search of the trunk revealed over 800 small containers of brown powder and various drug paraphernalia.[2698] Overall, more than nine ounces of heroin were seized.[2699]

Defendant motioned to suppress the physical evidence as well as the statements defendant had made to the police.[2700] The motion was denied.[2701] Defendant was subsequently convicted of criminal possession of a controlled substance in the first degree, and criminally using drug paraphernalia in the second degree.[2702] Defendant appealed.[2703]

The appellate division found that the defendant's right to be secure from unreasonable searches and seizures was not violated.[2704] First, the court held that defendant's consent to the

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2691. *Id.* at ___, 605 N.Y.S.2d at 760.
2692. *Id.* at ___, 605 N.Y.S.2d at 760.
2693. *Id.* at ___, 605 N.Y.S.2d at 760. The key ring had defendant's first name on it. *Id.*
2694. *Id.* at ___, 605 N.Y.S.2d at 760.
2695. *Id.* at ___, 605 N.Y.S.2d at 760.
2696. *Id.* at ___, 605 N.Y.S.2d at 760.
2697. *Id.* at ___, 605 N.Y.S.2d at 760.
2698. *Id.* at ___, 605 N.Y.S.2d at 760.
2699. *Id.* at ___, 605 N.Y.S.2d at 760.
2700. *Id.* at ___, 605 N.Y.S.2d at 760.
2701. *Id.* at ___, 605 N.Y.S.2d at 760.
2702. *Id.* at ___, 605 N.Y.S.2d at 760.
2703. *Id.* at ___, 605 N.Y.S.2d at 760.
2704. *Id.* at ___, 605 N.Y.S.2d at 761.

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police's search was not unsupported by the evidence in the record.[2705] The court stated that the burden is on the People to establish that defendant's consent was voluntary, and that they fail to meet this burden only if "under no view of the evidence in the record could it be found to be voluntary."[2706] Upon review, the court concluded that the evidence did support a finding that defendant's consent was voluntary.[2707]

Second, the court held that the police officer's act of shining a flashlight into defendant's car to observe objects in "plain view" did not constitute a search within the meaning of the State or Federal Constitutions.[2708] The court stated that "[i]t is well-

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2705. *Id.* at ___, 605 N.Y.S.2d at 761.

2706. *Id.* at ___, 605 N.Y.S.2d at 760-61 (citing People v. Rivera, 60 N.Y.2d 910, 912, 458 N.E.2d 1254, 1254, 470 N.Y.S.2d 577, 578 (1983)). The Court of Appeals in *Rivera* held "that it could not be said as a matter of law that consent given by defendant's wife to entry of their apartment by police officers was involuntary, i.e., that under no view of the evidence in the record could it be found to be voluntary." *Id.*

2707. *Beriguette*, ___ A.D.2d at ___, 605 N.Y.S.2d at 761.

2708. *Id.* at ___, 605 N.Y.S.2d at 761; *see, e.g.*, Texas v. Brown, 460 U.S. 730, 739-40 (1983) (holding that police officer's conduct of shining his flashlight to illuminate the interior of defendant's car did not constitute a search within the meaning of the Fourth Amendment); People v. Class, 63 N.Y.2d 491, 495, 472 N.E.2d 1009, 1011, 483 N.Y.S.2d 181, 183 (1984), *rev'd on other grounds*, 475 U.S. 106 (1986). The court held that a police officer's nonconsensual entry into an individual's automobile in order to determine the vehicle identification number violates the federal and state constitutions where the entry is based solely on a stop for a traffic infraction. *Id.* at 493, 472 N.E.2d at 1010, 483 N.Y.S.2d at 182. They concluded that "[a]ccordingly, an officer's simply peering inside an automobile does not constitute a search." *Id.* at 494, 472 N.E.2d at 1011, 483, N.Y.S.2d at 183; People v. Cruz, 34 N.Y.2d 362, 370, 314 N.E.2d 39, 44, 357 N.Y.S.2d 709, 715, *amended on other ground*, 35 N.Y.2d 708, 320 N.E.2d 274, 361 N.Y.S.2d 641 (1974) (holding that police officer's conduct of shining a flashlight into defendant's car was not an unreasonable intrusion under the constitution); People v. Campbell, 176 A.D.2d 814, 814, 575 N.Y.S.2d 138, 139 (2d Dep't 1991) (holding that police officer's act of observing interior of defendant's vehicle with the aid of a flashlight to reveal evidence that could have been in plain view but for the darkness was not an unreasonable intrusion under the constitution); People v. Bute, 172 A.D.2d 550, 551, 567 N.Y.S.2d 877, 878 (2d Dep't 1991) (holding that police officer's act of shining a flashlight into defendant's vehicle to illuminate what was otherwise in plain

settled that police officers may seize contraband in 'plain view' inside an automobile, provided that observation is made from a lawfully-obtained vantage point."[2709] The use of a flashlight to illuminate that which is in plain view did not elevate the level of intrusion.[2710] Additionally, as required by the "plain view" doctrine, the discovery of drugs was inadvertent, as the police were actually looking for a weapon.[2711]

The court relied on the reasoning of *People v. Manganaro*.[2712] In *Manganaro*, the court held that the police officer's conduct of walking toward defendant's parked car and looking through one of its windows did not constitute a search within the meaning of the State or Federal Constitutions.[2713] The court reasoned that "[t]he general public could peer into the interior of [defendant's] automobile from any number of angles . . . There is no legitimate

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view was a minimal intrusion and not an unreasonable one under the constitution); People v. Maltese, 149 A.D.2d 626, 627, 540 N.Y.S.2d 817, 817 (2d Dep't 1989) (holding that police officer's observations through a window located next to the door did not constitute a search in violation of the defendant's rights under the Fourth Amendment).

2709. *Beriguette*, ___ A.D.2d at ___, 605 N.Y.S.2d at 761; *see also* Coolidge v. New Hampshire, 403 U.S 443, 465 (1971) (stating that the plain view doctrine is applicable when a police officer either has a warrant to search a certain area or a recognized exception to the warrant requirement applies); People v. Manganaro, 176 A.D.2d 354, 355, 574 N.Y.S.2d 587, 588 (2d Dep't 1991) (holding that police officer's act of looking through a window of a parked car did not constitute a search within the meaning of either the New York or Federal Constitution); People v. Maltese, 149 A.D.2d 626, 627, 540 N.Y.S.2d 817, 817 (2d Dep't 1989) ("observations through a window . . . of objects in open view d[o] not constitute a search in violation of the defendant's rights under the Fourth Amendment").

2710. *Beriguette*, ___ A.D.2d at ___, 605 N.Y.S.2d at 761.

2711. *Id.* at ___, 605 N.Y.S.2d at 761; *see also* Horton v. California, 496 U.S. 128, 135 (1990) ("[T]he 'plain-view' doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object."); Texas v. Brown, 460 U.S. 730, 737 (1983) (stating that a police officer cannot know in advance the location of evidence and rely on the plain view doctrine as a pretext to seizing the evidence); *Coolidge*, 403 U.S. at 469 (stating that the "discovery of evidence in plain view must be inadvertent").

2712. 176 A.D.2d 354, 574 N.Y.S.2d 587 (2d Dep't 1991).

2713. *Id.* at 355, 574 N.Y.S.2d at 588.

expectation of privacy . . . shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers."[2714]

Moreover, "[t]he discovery of contraband by an officer who 'purposefully' looks inside a closet, a drawer, or a car, may, in other words, be considered inadvertent, provided that he was not actually aware that that particular item of contraband or evidence would be found in that particular place."[2715] Additionally, in *Beriguette*, the court found that defendant's arrest was proper, since it was clearly supported by "probable cause to believe that the defendant had committed aggravated harassment and/or assault."[2716] Moreover, when the police entered the apartment building and hallway where the arrest was made, it was with the consent of the complainant, who was also a tenant in the apartment building.[2717]

Furthermore, the court also found that, in viewing the evidence in the light most favorable to the People,[2718] it was legally

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2714. *Id.* at 355, 574 N.Y.S.2d at 588-89. The court in *Manganaro* thus concluded that the police officer "had no obligation to obtain a warrant prior to looking into the defendant's car" in which he found contraband and then seized it. *Id.* at 356, 574 N.Y.S.2d at 589. Although he had "purposefully" looked inside the car, the discovery of the contraband was inadvertent since he was not aware it would be found there. *Id.*

2715. *Id.*

2716. *Beriguette*, ___ A.D.2d at ___, 605 N.Y.S.2d at 761.

2717. *Id.*; *see also* People v. Daly, 180 A.D.2d 872, 874, 579 N.Y.S.2d 491, 492 (3d Dep't 1992) (holding that police entry into defendant's residence to arrest defendant was not an illegal warrantless arrest as consent was given by his brother-in-law who possessed the requisite degree of control over the premises needed to give consent); People v. Matus, 166 A.D.2d 464, 465, 560 N.Y.S.2d 504, 505 (2d Dep't 1990) (holding that warrantless arrest of defendant was permissible as the police entered the apartment where defendant was arrested with probable cause and with the owner's consent); People v. Pizzichillo, 144 A.D.2d 589, 590, 534 N.Y.S.2d 432, 433 (2d Dep't 1988) (holding that police officer's seizure of defendant's vehicle and items within it was lawful as the vehicle was voluntarily turned over to police by members of defendant's family all of whom possessed the requisite degree of authority and control over the premises where the vehicle was located).

2718. *Beriguette*, ___ A.D.2d at ___, 605 N.Y.S.2d at 761; *see also* People v. Contes, 60 N.Y.2d 620, 621, 454 N.E.2d 932, 932-33, 467 N.Y.S.2d 349, 349-50 (1983) ("The standard for reviewing the legal sufficiency of evidence

sufficient to find defendant had dominion and control over the car which the police had searched.[2719]

The court also relied on federal law to reach its conclusion. In the case of *Coolidge v. New Hampshire*,[2720] the United States Supreme Court held that the warrantless search and seizure of the defendant's car was unconstitutional.[2721] The Court found that the plain view doctrine may be applied where the "initial intrusion that brings the police within plain view" of the incriminating evidence is justified.[2722] The Court discussed typical situations that fell within the plain view doctrine, such as a search supported by a warrant for a different object,[2723] hot pursuit,[2724] a search incident to arrest,[2725] and inadvertent discovery of incriminating evidence.[2726]

Therefore, the Court placed two limitations on the doctrine: first, the initial intrusion must be independently justified,[2727] and second, that the discovery of plain view evidence must be inadvertent, not anticipated.[2728] The police's seizure of

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in a criminal case is whether 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" quoting Jackson v. Virginia, 443 U.S. 307 (1979))).

2719. *Beriguette*, ___ A.D.2d at ___, 605 N.Y.S.2d at 761; At defendant's trial, "[p]olice witnesses testified that she had seen the defendant driving the car, and the keys to the car were found on the defendant's person on a ring marked with his name." *Id.*

2720. 403 U.S. 443 (1971).

2721. *Id.* at 473. As well, the court held that the search did not fall within the "plain view" exception to the search warrant requirement. *Id.* at 464. The police had had ample opportunity to obtain a valid warrant, they knew the exact description and location of the car well in advance, and had intended to seize the car when they came upon defendant's property. *Id.* at 472.

2722. *Id.* at 465.

2723. *See* Go-Bart Importing Co. v. United States, 282 U.S. 344, 358 (1931).

2724. *See* Warden v. Hayden, 387 U.S. 294 (1967).

2725. *See* Chimel v. California, 395 U.S. 752, 762-63 (1969).

2726. *See* Harris v. United States, 390 U.S. 234 (1968).

2727. *Coolidge*, 403 U.S. at 467.

2728. *Id.* at 469.

defendant's car in *Coolidge* did not fall within the "plain view" doctrine exception, and thus was held unconstitutional.[2729]

Thus, under the State[2730] and Federal[2731] Constitutions, the warrantless search of defendant's car, in which contraband was found and seized, was proper under the "plain view" doctrine.[2732]

People v. Edney[2733]
(decided February 7, 1994)

The defendant claimed that her state[2734] and federal[2735] constitutional rights to be free from unreasonable searches and seizures were violated when the police failed to execute valid arrest warrants in a timely manner, and engaged in a warrantless search of a bag found at her feet.[2736] The defendant alleged that the hearing court erred in not granting her motion to suppress the evidence seized therein.[2737] In addition, the defendant claimed that the prosecution's failure to disclose police reports violated

2729. *Id.* at 472-73.

2730. N.Y. CONST. art. I, § 12.

2731. U.S. CONST. amend. IV.

2732. *Beriguette*, ___ A.D.2d at ___ 605 N.Y.S.2d at 761.

2733. ___ A.D.2d ___, 607 N.Y.S.2d 380 (2d Dep't 1994).

2734. N.Y. CONST. art. I, §12. Article I, section 12 states:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizure, 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.

2735. U.S. CONST. amend. IV. The Fourth Amendment states:

> The right of 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.

2736. *Edney*, ___ A.D.2d at ___, 607 N.Y.S.2d at 381.

2737. *Id.*