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Search and Seizure: People v. Scott

People v. Scott[2881]
(decided October 4, 1993)

Defendant claimed that his Federal[2882] and New York State[2883] constitutional right to be protected against an unreasonable search and seizure[2884] was violated because police officers lacked probable cause to search and arrest him.[2885] Defendant also claimed that he was denied the right to effective assistance of counsel as guaranteed by both the Federal[2886] and the New York State Constitutions.[2887] The court held that the police officers had probable cause to arrest and search the defendant,[2888] since the officers had received a radio transmission describing an armed perpetrator in the vicinity, and upon defendant's insufficient response to the officer's inquiry.[2889] Additionally, the court held that the defendant was not denied effective assistance of counsel,[2890] stating that "true ineffectiveness of counsel should not be confused with an unsuccessful trial strategy."[2891]

Two Housing Police Officers were notified by radio transmission that officers from the 78th precinct were in hot

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2881. 197 A.D.2d 550, 602 N.Y.S.2d 208 (2d Dep't 1993).

2882. 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, . . . but upon probable cause . . . .").

2883. 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, . . . but upon probable cause . . . .").

2884. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209.

2885. *Id.*

2886. *Id.*; *see also* U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.").

2887. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209; *see also* N.Y. CONST. art. I, § 6 ("In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions . . . .").

2888. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209.

2889. *Id.*

2890. *Id.*

2891. *Id.* at 551, 602 N.Y.S.2d at 209-10.

pursuit of four black males in a red Honda.[2892] The men had just committed an armed bank robbery and they were driving in the direction of a post office/supermarket complex.[2893] The two officers observed the police vehicle near the complex but did not see the red Honda.[2894] The two officers drove into the parking lot complex and were directed by a postal employee down an alley, where they observed the defendant, Michael Scott, a black male, running for a fence.[2895] The officers then drove down the alley where the defendant was climbing the fence, embarked from their vehicle with their weapons drawn and ordered the defendant to "stop, [and] not to move."[2896] The officer's inquired as to where defendant was going, and he replied, that "he was going shopping."[2897] The officers ordered the defendant off the fence.[2898] As Scott was making his descent from the fence, one of the officers grabbed him and detected a hard object in the defendant's waistband.[2899] The object was subsequently determined to be a two-way radio.[2900] Thereafter, a search of the defendant resulted in the finding of a sheet of paper containing "various radio frequencies and corresponding police precincts."[2901]

The court first decided whether it was proper for the police to draw their guns and order the defendant off the fence based on the information they received from the initial radio transmission, and the defendant's attempt to flee the complex area by climbing over the fence.[2902] The court relied on *People v. Chestnut*[2903] in deciding this issue. In *Chestnut*, officers received a radio

2892. *Id.* at 550, 602 N.Y.S.2d at 209.
2893. *Id.*
2894. *Id.*
2895. *Id.* at 550-51, 602 N.Y.S.2d at 209.
2896. *Id.* at 551, 602 N.Y.S.2d at 209
2897. *Id.*
2898. *Id.*
2899. *Id.*
2900. *Id.*
2901. *Id.*
2902. *Id.*
2903. 51 N.Y.2d 14, 409 N.E.2d 958, 431 N.Y.S. 485, *cert. denied*, 449 U.S. 1018 (1980).

transmission which described an armed perpetrator.[2904] The officers, who were on an anti-crime patrol, had observed the defendant behaving suspiciously.[2905] The officer approached the defendant, followed by his partner, and drew his gun, ordering defendant to "freeze" and "lay on the ground."[2906] The *Chestnut* court held that the officers were justified in drawing their guns since they believed that the defendant had just committed armed robbery and quite possibly still armed.[2907] Similarly, the court in *Scott* reasoned that the two officers were justified in their actions since they believed defendant to be a perpetrator of an armed bank robbery, based on the radio transmission and his attempt to scale a fence to flee the complex.[2908]

The court next determined that it was reasonable for the officer, who had felt a hard object on the defendant's waist, to retrieve the object.[2909] In support of this conclusion, the court cited *People v. Woods*.[2910] In *Woods*, the court held that in light of past experiences with the defendant, it was not unreasonable for an officer "to pat defendant in the chest area when defendant quickly reached toward the breast area of his jacket, and for that officer, upon feeling a hard object, to reach inside the jacket and retrieve it."[2911] The court in *Scott* apparently felt that Ferris, "upon feeling a hard object" as in *Woods*, was acting reasonably

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2904. *Id.* at 17, 409 N.E.2d at 959, 431 N.Y.S.2d at 487.

2905. *Id.*

2906. *Id.* at 18, 409 N.E.2d at 960, 431 N.Y.S.2d at 487; *see also* People v. Allen, 73 N.Y.2d 379, 538 N.E.2d 323, 540 N.Y.S.2d 971 (1989) (stating officers had probable cause to handcuff defendants based on radio transmissions that described four armed perpetrators which resembled defendants and defendants were found at the crime scene); People v. Castro, 53 N.Y.2d 1046, 425 N.E.2d 888, 442 N.Y.S.2d 500 (1981) (holding officers had reasonable suspicions to stop defendant based on the scope and intensity of the circumstances at hand).

2907. *Chestnut*, 51 N.Y.2d at 21, 409 N.E.2d at 961, 431 N.Y.S.2d at 489.

2908. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209.

2909. *Id.*

2910. 64 N.Y.2d 736, 475 N.E.2d 442, 485 N.Y.S.2d 975 (1984).

2911. *Id.* at 737, 475 N.E.2d at 442, 485 N.Y.S.2d 975.

in retrieving the object, since he believed Scott had just committed an armed robbery.[2912]

In addition, the court held that the officers had probable cause to arrest and search the defendant.[2913] The basis of the probable cause was the defendant telling the parties that "he was going shopping" in response to their inquiry, combined with the discovery of the two-way radio.[2914] The court came to its conclusion based on the reasoning set forth by the court in *People v. Hollman.*[2915]

In *Hollman*, the arresting police officer witnessed defendants boarding a bus with an orange bag and black knapsack and placing it in an overhead rack a few seats away from them.[2916] The officer asked defendants whether they had checked their luggage, to which defendants responded by saying that they had no luggage.[2917] Next, the officer asked defendants if they knew who owned the orange bag and black knapsack, to which they responded that they did not.[2918] Although the court in *Hollman* was concerned with the larger issues as to whether or not the

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2912. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209.

2913. *Id.*

2914. *Id.*

2915. 79 N.Y.2d 181, 590 N.E.2d 204, 581 N.Y.S.2d 619 (1992); *see also* People v. Holmes, 81 N.Y.2d 1056, 1058, 619 N.E.2d 396, 398, 601 N.Y.S.2d 459, 461 (1993) (holding that defendant's flight from police officers and observation that defendant had a bulge in his jacket did not provide sufficient reasonable suspicion of criminal activity to justify pursuit); People v. Bronston, 68 N.Y.2d 880, 501 N.E.2d 579, 508 N.Y.S.2d 930 (1986). The court held that defendant's presence on a fire escape and the fact the description of defendant's clothing was consistent with a report of a burglary in process, did not provide police with sufficient reason to order defendant down at gun point and frisk him, without first inquiring as to why he was on the fire escape. *Id.* at 881, 501 N.E.2d at 580, 508 N.Y.S.2d at 931; People v. Hunter, 30 N.Y.2d 774, 284 N.E.2d 879, 333 N.Y.S.2d 761 (1972). In *Hunter*, the court held that the arresting officer had probable cause to arrest the defendant based on the time of night, the fact that there had previously been numerous burglaries in that area and defendant's unsatisfactory response to officers questions. *Id.* at 776, 284 N.E.2d at 879, 333 N.Y.S.2d at 761.

2916. *Hollman*, 79 N.Y.2d at 186, 590 N.E.2d at 206, 581 N.Y.S.2d at 621.

2917. *Id.*

2918. *Id.* at 193, 590 N.E.2d at 211, 581 N.Y.S.2d at 626.

questions asked by the officer were "requests for information" or a "common-law right to inquire,"[2919] the court in *Scott* concentrated on the *Hollman* court's discussion of sufficient probable cause.[2920] By affirming the officer's arrest of the defendant in *Hollman*,[2921] that court concluded that the officer's observance of defendant, in combination with defendant's responses to questions, presented the officer with sufficient probable cause to search the bags and arrest the defendant.

Similarly, in *Hunter*, the court held that the arresting officer had sufficient probable cause to arrest the defendant, based on the circumstances which included "the time of night and the place, a construction area consisting largely of abandoned buildings where there had been numerous prior burglaries," and an

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2919. *Id.* In *Hollman*, the court concluded that the officer's initial question as to whether the defendants checked their bags or not was a legitimate "request for information" that was supported by a credible reason, but indicative of possible criminality. *Id.* The court said that the officer's question to defendant Hollman of whether or not he knew the owner of the orange bag and black knapsack was of a higher standard of intrusiveness and came under the officer's "common-law right of inquiry" and was supported by the officer's belief that "criminality was afoot." *Id.* These two types of questions represent the first and second tier of the *De Bour* four-tier approach. *Id.* at 184-85, 590 N.E.2d at 205-06, 581 N.Y.S.2d at 620-21; *see also* People v. De Bour, 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375, (1976). The *Hollman* court described the four-tier method of analysis, which also includes the third tier, "where a police officer has reasonable suspicion that a particular person" was involved in a crime the officer may forcibly stop or detain him and the fourth tier which states that if an officer "has sufficient probable cause to believe that a person has committed a crime" the officer may arrest that person. 79 N.Y.2d at 185, 590 N.E.2d at 205-06, 581 N.Y.S.2d at 620-21 (citing *De Bour*, 40 N.Y.2d at 223, 352 N.E.2d at 571-72, 386 N.Y.S.2d at 384-85 (1976)).

2920. This appears to be true because after the court states that the officers had sufficient probable cause to arrest the defendant, specifically cited to the *Hollman* case, in which the court discussed the third and fourth tiers of the *De Bour* method. The court noticeably fails to cite to, and thus meant to exclude from their reasoning, the first and second tiers of the *De Bour* method, which consists of what type of question was asked and whether an officer had a right to ask such question. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209 (citing *Hollman*, 79 N.Y.2d at 185, 590 N.E.2d at 205-06, 581 N.Y.S.2d at 620-21).

2921. *Hollman*, 79 N.Y.2d at 196, 590 N.E.2d at 212-13, 581 N.Y.S.2d at 627-28 .

"unsatisfactory response" from defendant to the officers questions.[2922]

The court in *Scott* held that the officers initially had reason to inquire of defendant's whereabouts under the prevailing circumstances.[2923] Based on the defendant's insufficient response to the inquiry and the finding of the two-way radio, the court held that the officers had sufficient probable cause to arrest and search defendant.[2924]

Finally, defendant claimed he was denied effective assistance of counsel.[2925] The court refused to give this claim any significant value since the defendant could not show that his counsel's performance had hindered his representation to the extent that it was "less than meaningful."[2926]

2922. *Hunter*, 30 N.Y.2d at 774, 284 N.E.2d at 879, 333 N.Y.S.2d at 762.

2923. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 209.

2924. *Id.*

2925. *Id.*; *see also* U.S. CONST. amend. VI; N.Y. CONST. art. 1, § 6.

2926. *Scott*, 197 A.D.2d at 551, 602 N.Y.S.2d at 210; *see also* People v. Garcia, 75 N.Y.2d 973, 974, 555 N.E.2d 902, 902, 556 N.Y.S.2d 505, 505 (1990) (holding that defendant's claim of ineffective assistance of counsel failed even though counsel did not make a challenge for a warrantless arrest because counsel had sound reasons for this choice); People v. Rivera, 71 N.Y.S.2d 705, 709, 525 N.E.2d 698, 700, 530 N.Y.S.2d 52, 54 (1988) (holding that ineffective assistance of counsel claim fails unless a showing can be made that there was no strategic or legitimate explanation for counsel's failure to act); People v. Baldi, 54 N.Y.2d 137, 148, 429 N.E.2d 400, 406, 444 N.Y.S.2d 893, 899 (1981). In *Baldi*, the court held that counsel used a risky tactic by letting defendant take the stand, but did so consistent with the defense of insanity. The attorney also used his experience to provide a competent defense. *Id. Cf.* People v. Aiken, 45 N.Y.2d 394, 380 N.E.2d 272, 458 N.Y.S.2d 447 (1978). In *Aiken*, the court noted that there are a few standards to determine if a counsel's representation has been ineffective. *Id.* at 398, 380 N.E.2d at 274-75, 458 N.Y.S.2d at 447. The court described these standards as ranging from the traditional standard that counsel's representation made the "trial a farce and a mockery of justice," to the more stringent standard of "reasonable competence" developed by the federal courts. *Id.*