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Search and Seizure

SEARCH AND SEIZURE

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, 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.

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, 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.

COURT OF APPEALS

People v. Natal[1054]
(decided March 27, 1990)

Defendant claimed that his constitutional right to be protected against unreasonable search and seizure was violated under the state[1055] and federal[1056] constitutions because his personal items, which were surrendered upon his arrest "and then lawfully held by the jail for safe-keeping, . . . [were] transferred to the District Attorney, without a warrant, for use as trial evidence."[1057]

The defendant did not challenge the search conducted at the time of his arrest. The court found that the defendant's right against unreasonable search and seizure was not violated because

1054. 75 N.Y.2d 379, 553 N.E.2d 239, 553 N.Y.S.2d 650, *cert denied*, Natal v. New York, 111 S. Ct. 169 (1990).

1055. N.Y. CONST. art. I, § 12.

1056. U.S. CONST. amend. IV.

1057. *Natal*, 75 N.Y.2d at 382, 553 N.E.2d at 240, 553 N.Y.S.2d at 651.

(1) the error committed was harmless in that eyewitness testimony placed the defendant at the scene of the crime, and (2) although the defendant had a property interest in his personal items, he did not have "a privacy interest protectable by State and Federal guarantees against unreasonable searches and seizures."[1058] Defendant was arrested for breaking into a house and "taken to police headquarters, where he was forced to surrender his clothing and personal effects. As a matter of police routine, those items were inventoried . . . "[1059] and placed in a locker at the jail where defendant was being held. Nine months later, which was one week before the trial, the district attorney subpoenaed the items and introduced them into evidence as part of the People's case.[1060]

The court noted that items taken as evidence at the time of arrest are distinguishable from "items later taken by prison authorities [and] held as bailments to be safeguarded for the accused during incarceration."[1061] Furthermore, the court reasoned that while the defendant had a property interest in his personal effects, he had not shown that he also had a privacy interest protectable by the state and federal guarantees against unreasonable searches and seizures.[1062] "A constitutionally protected privacy interest requires the existence of a subjective expectation of privacy that society is willing to recognize as reasonable."[1063] Therefore, this expectation of privacy does not exist when personal items are "exposed to police view under unobjectionable circumstances"[1064] and then lawfully transferred to the jail for safekeeping.

To evaluate whether the defendant's expectation of privacy was

1058. *Id.* at 382-83, 553 N.E.2d at 240-41, 553 N.Y.S.2d at 651-52 (citing People v. Reynolds, 71 N.Y.2d 552, 523 N.E.2d 290, 528 N.Y.S.2d 15 (1988); United States v. Chadwick, 433 U.S. 1 (1977)) (as descriptive of privacy issues regarding unreasonable searches and seizures).

1059. *Id.* at 382, 553 N.E.2d at 240, 553 N.Y.S.2d at 651.

1060. *Id.*

1061. *Id.* at 383, 553 N.E.2d at 240, 553 N.Y.S.2d at 651.

1062. *Id.* at 383, 553 N.E.2d at 241, 553 N.Y.S.2d at 652.

1063. *Id.* (citing People v. Rodriquez, 69 N.Y.2d 159, 505 N.E.2d 586, 513 N.Y.S.2d 75 (1987)).

1064. *Id.*

reasonable, the court applied the rationale established in *People v. Perel.*[1065] In *Perel*, the defendant's property, which consisted of slips of paper and an address book, was placed in a police property envelope following his arrest. Shortly thereafter, a police detective removed the property for examination because he believed it contained evidence of the crime for which the defendant was charged.[1066] Defendant was convicted. He appealed, asserting that the slips of paper were obtained by an illegal search. The court held that the search and seizure was reasonable in light of the fact that the defendant had no reasonable expectation of privacy in property that the police had lawfully seen as a result of the search and inventory of his person at the police station.[1067] The court reasoned that within a justified larger seizure and detention of a person after an arrest, "a less intrusive search" would not unduly violate any remaining expectation of privacy.[1068]

In *Natal*, the defendant argued that *Perel* was distinguishable from his case because nine months had elapsed between the initial seizure of his property and the "second look," while in *Perel,* the time between "looks" was only thirty minutes. The court rejected this distinction as having no "meaningful difference."[1069] Perhaps because the court based its holding on the fact that the defendant had no reasonable expectation of privacy, the time difference between the two cases was not viewed as meaningful. Therefore, it was not necessary for the district attorney to secure a search warrant before obtaining defendant's possessions from jail authorities.

In its discussion of this issue under the Federal Constitution, the court of appeals summarized the federal law on the issue of search and seizure of a defendant's property held in the property room of a jail and later searched and taken for use at the defendant's criminal trial as follows:

(i) when an object lawfully came into plain view at the time of

1065. 34 N.Y.2d 462, 315 N.E.2d 452, 358 N.Y.S.2d 383 (1974).
1066. *Id.* at 464-65, 315 N.E.2d at 454, 358 N.Y.S.2d at 386-87.
1067. *Id.* at 468, 315 N.E.2d at 456-57, 358 N.Y.S.2d at 389-90.
1068. *Id.* at 467, 315 N.E.2d at 456, 358 N.Y.S.2d at 389.
1069. *Natal*, 75 N.Y.2d at 384, 553 N.E.2d at 241, 553 N.Y.S.2d at 652.

a search upon the arrestee's arrival at the place of detention,

(ii) later investigation establishes that this item is of evidentiary value, and

(iii) the item remains in police custody as a part of the arrestee's inventoried property, then it is permissible for the police, without a warrant, to retrieve that object and thereafter deal with it as an item of evidence.[1070]

The court stated that defendant's property fit within this criteria even though it was maintained by a county jail instead of the police.[1071] Therefore, the court found that defendant's argument must also be rejected under federal constitutional law.

The court stated further that the facts of this case did not require a decision on "whether, as a matter of State constitutional law, we would subscribe to the perceived Federal law on the subject."[1072]

Seelig v. Koehler[1073]
(decided May 8, 1990)

Petitioners brought an article 78 proceeding to block the implementation of a random urinalysis drug testing program, asserting that the testing violated their right against unreasonable searches and seizures as protected by the federal[1074] and state[1075] constitutions.[1076] The court of appeals held that the random drug urinalysis testing of correction officers was not violative of either the federal or state constitution because petitioners had a diminished expectation of privacy that was outweighed by the state's substantial interest in ensuring that correction officers are drug

1070. *Id.* at 383-84, 553 N.E.2d at 241, 553 N.Y.S.2d at 652 (quoting 2 W. LAFAVE, SEARCH AND SEIZURE, § 5.3(b) at 491 (2d ed. 1987)); *see also* United States v. Edwards, 415 U.S. 800 (1973).

1071. *Natal*, 75 N.Y.2d at 384, 553 N.E.2d at 241, 553 N.Y.S.2d at 652.

1072. *Id.*

1073. 76 N.Y.2d 87, 556 N.E.2d 125, 556 N.Y.S.2d 832, *cert. denied*, 111 S. Ct. 134 (1990).

1074. U.S. CONST. amend. IV.

1075. N.Y. CONST. art. I, § 12.

1076. *Seelig*, 76 N.Y.2d at 91, 556 N.E.2d at 126, 556 N.Y.S.2d at 833.