Touro Law Review

Volume 8 | Number 3 Article 52

1992

Searches and Seizure

nale. In determining whether a station house confession made after a *Payton*[1089] violation should be suppressed, the court decided that "[f]or the reasons stated in *New York v. Harris*, . . . we are persuaded that the California Constitution does not require that the confession be suppressed . . . ."[1090] Therefore, the court concluded that the lack of an arrest warrant will not require suppression of subsequent statements made by the defendant at the police station.[1091]

People v. Offen[1092]
(decided November 19, 1991)

A criminal defendant contended that his right to be protected against unreasonable searches under the New York State Constitution[1093] was violated. The defendant contended that a canine "sniff" and x-ray of a package addressed to him

---

applied retroactively.

1089. The court also relied upon People v. Ramey, 545 P.2d 1333 (Cal.), *cert denied*, 429 U.S. 929 (1976), in which the court held that warrantless arrests within the home are per se unreasonable absent exigent circumstances. *Id.* at 1341.

1090. *Marquez*, 822 P.2d at 426.

1091. *Id. See also* State v. Christiansen, 810 P.2d 1127, 1130 (Idaho Ct. App. 1990) (court cited *Harris* when it stated: "Where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the use of defendant's statements made outside of his home, even if it is taken after an invalid warrantless arrest in violation of *Payton*."); People v. Brown, 574 N.E.2d 78, 80 (Ill. App. Ct. 1991) (court cited *Harris* in support of its decision not to suppress statements outside defendant's home subsequent to warrantless arrest in defendant's home); State v. Corpier, 793 S.W.2d 430, 439 (Mo. Ct. App. 1990) ("We therefore hold, as in *Harris*, that the police had probable cause to arrest the defendant prior to the unlawful entry . . . and thus the subsequent confession . . . not obtained at the apartment, w[as] not the fruit[] of the illegal arrest.").

1092. 78 N.Y.2d 1089, 585 N.E.2d 370, 578 N.Y.S.2d 121 (1991). For additional case analysis see the discussion of the appellate division, fourth department's decision in *New York State Constitutional Decisions: 1990 Compilation*, 8 TOURO L. REV. 235, 428-432 (1991).

1093. 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 . . . .").

constituted an unreasonable search.

The court of appeals concluded that it "need not determine . . . whether the canine 'sniff' of defendant's package constituted a search within the meaning of article I, § 12 [because] the 'sniff' would have been proper inasmuch as the Sheriffs had sufficient information to support a reasonable suspicion that the package contained contraband."[1094] The "alert" raised by the canine sniff "constituted probable cause that the package contained narcotics [and] was sufficient to support the issuance of the warrant . . . ."[1095]

The Livingston Sheriff's Department, acting upon information received from two informants, believed that the defendant was receiving shipments of cocaine concealed in teddy bears originating from Miami, Florida. During a two-month period the defendant received four such shipments via United Parcel Service (UPS) from a Florida address. When the sheriff's department was notified by UPS that another package from the same address had arrived, it instructed UPS to hold the package so that a United States Customs Service dog could sniff the package for cocaine. The dog responded positively to the package, after which the sheriff's department obtained a warrant. After a search of the package, the defendant's automobile, and the defendant's home, the defendant was arrested for possession of cocaine and marihuana. The defendant's motion to suppress the seized contraband was denied and he subsequently pled guilty to criminal possession of a controlled substance in the third degree.[1096]

The court of appeals noted that the United States Supreme Court determined that a canine sniff does not constitute a search under the Fourth Amendment.[1097] However, the court of appeals

---

1094. *Offen*, 78 N.Y.2d at 1091, 585 N.E.2d at 372, 578 N.Y.S.2d at 123.

1095. *Id.*

1096. *Id.* at 1090, 585 N.E.2d at 371, 578 N.Y.S.2d at 122.

1097. *See* United States v. Place, 462 U.S. 696 (1983). In *Place*, Drug Enforcement Agency agents seized the defendant's luggage upon suspicion that it contained contraband. It was then subjected to a canine sniff which resulted in a positive reaction. The Supreme Court held that the sniff did not constitute a search within the meaning of the fourth amendment because it was far less

stated that pursuant to *People v. Dunn*,[1098] a canine sniff may constitute a search under article I, section 12 of the New York State Constitution.[1099] In *Dunn*, the defendant was convicted on various drug related charges as a result of a canine sniff performed by a narcotics dog in the hallway outside of the defendant's apartment. The positive canine reaction, in conjunction with prior police information, prompted the police to obtain a search warrant, culminating in the seizure of large quantities of narcotics.[1100] While the *Dunn* court held that a canine sniff constituted a search under the state constitution, such a procedure "may be used without a warrant or probable cause, provided that the police have a reasonable suspicion that a residence contains illicit contraband."[1101]

The *Offen* court declined to determine whether the canine sniff constituted a search within the meaning of article I, section 12,[1102] as it had previously declined in *People v. Price*.[1103]

---

intrusive than a typical search. *Id.* at 707. In addition, the court reasoned that a sniff discloses only whether or not the package contains contraband, thus the information obtained by the authorities is limited. *Id.* Additionally, in United States v. Jacobson, 466 U.S. 109 (1984), the Court acknowledged that *Place* stood for the proposition that a canine sniff was not a search within the meaning of the fourth amendment. *Id.* at 123.

1098. 77 N.Y.2d 19, 564 N.E.2d 1054, 563 N.Y.S.2d 388, *cert. denied*, 111 S. Ct. 2830 (1991).

1099. *Offen*, 78 N.Y.2d at 1091, 585 N.E.2d at 372, 578 N.Y.S.2d at 123; *see also Dunn*, 77 N.Y.2d at 25, 564 N.E.2d at 1058, 563 N.Y.S.2d at 392. The *Dunn* court held that the sniff constituted a search because the "police were able to obtain information regarding the contents of a place that has traditionally been accorded a heightened expectation of privacy." *Id.*

1100. *Dunn*, 77 N.Y.2d at 21-22, 564 N.E.2d at 1055, 563 N.Y.S.2d at 389.

1101. *Id.* at 26, 564 N.E.2d at 1058, 563 N.Y.S.2d at 392. The police acted upon information that drugs were being kept in an apartment leased by the defendant. *Id.*

1102. *Offen*, 78 N.Y.2d at 1091, 585 N.E.2d at 372, 578 N.Y.S.2d at 123. *See also* People v. Price, 54 N.Y.2d 557, 431 N.E.2d 267, 446 N.Y.S.2d 906 (1981). In *Price*, the court declined to find whether a canine sniff constituted a search under the New York Constitution. Instead, the court focused on the reduced expectation of privacy a person has with regard to luggage placed in hands of common carrier. *Id.* at 563, 431 N.E.2d at 270, N.Y.S.2d at 909. However, the court concluded that such a sniff did not constitute a search

However, the court reasoned that were it to conclude that the sniff constituted a search, it would have been proper because the "[s]heriffs had sufficient information to support a reasonable suspicion that the package contained contraband."[1104] Therefore, the *Offen* court declared that it did not have to determine whether the x-ray constituted an illegal search because the sniff "constituted probable cause that the package contained narcotics and thus was sufficient to support the issuance of the warrant."[1105]

Therefore, under the New York State Constitution, unlike its federal counterpart, a canine sniff will most likely be determined to be a search. However, if the court finds that the police acted with sufficient information to formulate a claim of probable cause, then the warrantless sniff will be deemed proper and is sufficient to support the subsequent issuance of a search warrant.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

People v. Jaiman[1106]
(decided January 29, 1991)

A criminal defendant claimed that his right to be protected against illegal searches and seizures under the state[1107] and federal[1108] constitutions was violated when the police, lacking

---

under the fourth amendment. The court stated that "[s]ince the dog does nothing more than smell the air surrounding the luggage in order to detect odors emanating from that luggage, there was no intrusion or search of the luggage." *Id.* at 561, 431 N.E.2d at 269, 446 N.Y.S.2d at 908.

1103. 54 N.Y.2d 557, 431 N.E.2d 267, 446 N.Y.S.2d 906 (1981).

1104. *Offen*, 78 N.Y.2d at 1091, 585 N.E.2d at 372, 578 N.Y.S.2d at 123.

1105. *Id.* at 1091, 585 N.E.2d at 372, 578 N.Y.S.2d at 123 (citing People v. Dunn, 77 N.Y.2d 19, 564 N.E.2d 1054, 563 N.Y.S.2d 388 (1990)).

1106. 169 A.D.2d 589, 565 N.Y.S.2d 13 (1st Dep't), *appeal denied*, 78 N.Y.2d 968, 580 N.E.2d 419, 574 N.Y.S.2d 947 (1991).

1107. N.Y. CONST. art. I, § 12.

1108. U.S. CONST. amend. IV.