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Searches and Seizure

SECOND DEPARTMENT

People v. Keta[1159]
(decided February 19, 1991)

Just prior to printing, this case was reversed by the New York Court of Appeals[1160] which adhered to its view, previously expressed in *People v. Burger*,[1161] that Vehicle and Traffic Law, section 415-a violates the New York Constitution. The court held that "more is required to permit an exception to the warrant and probable cause requirements embodied in article I § 12"[1162] than pervasive governmental supervision of defendant's industry.

The defendant, owner of an automobile dismantling yard, challenged the state's use of evidence obtained from an administrative search of his yard authorized by Vehicle and Traffic Law (VTL) section 415-a(5)(a)[1163] as the fruits of an unreasonable search and seizure under the New York State Constitution.[1164] The Supreme Court, in *New York v. Burger*,[1165] previously rejected an identical challenge to VTL section 415-a(5)(a) on federal constitutional grounds, overruling the New York Court of Appeals.[1166] Therefore, the defendant's claim was confined to a state constitutional challenge. The court of appeals held that the administrative search conducted pursuant to VTL section 415-a(5)(a) did not violate the state constitution, and reversed the order granting defendant's motion to suppress.[1167]

The police had randomly selected defendant's vehicle dismantling yard for an inspection, pursuant to their authority under the

1159. 165 A.D.2d 172, 567 N.Y.S.2d 738 (2d Dep't 1991), *rev'd*, People v. Scott; People v. Keta, Nos. 6, 27, 1992 WL 62774 (N.Y. Apr. 2, 1992).

1160. People v. Scott; People v. Keta, Nos. 6, 27, 1992 WL 62774 (N.Y. Apr. 2, 1992).

1161. 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986), *rev'd*, 482 U.S. 691 (1987).

1162. *Id.* at 14. (referring to N.Y. CONST. art. I, § 12).

1163. N.Y. VEH. & TRAF. LAW § 415-a(5)(a) (McKinney Supp. 1992).

1164. N.Y. CONST. art. I, § 12.

1165. 482 U.S. 691 (1987).

1166. *Id.* at 702.

1167. *Keta*, 165 A.D.2d at 183, 567 N.Y.S.2d at 745.

VTL.[1168] After selecting an assortment of automotive parts from the yard and recording their identification numbers, the police "ran" these numbers through a computer located in their patrol car. "[T]he officers discovered that some of these parts were from automobiles which had been reported stolen."[1169] The defendant was then asked to produce his "police book,"[1170] which maintained records of all purchases of vehicle parts as required by the statute. Examination of the police book revealed that defendant had failed to record the suspect parts and he was placed under arrest. A subsequent search of the yard, made after the police had obtained a warrant, revealed thirty-five stolen automobile parts.[1171] The defendant was charged with grand larceny, possession of stolen property, and falsifying business records.[1172] The defendant moved to suppress the evidence obtained.

The hearing court granted the defendant's motion to suppress, reasoning that the New York Court of Appeals had previously determined that VTL section 415-a(5)(a) was unconstitutional under the Fourth Amendment.[1173] Because the federal provision is identical to the state provision, and because the court of appeals has previously shown an inclination to "expand the right of citizens by 'relying on State, rather than on more narrowly interpreted Federal grounds[,]'"[1174] the hearing court concluded that a more expansive interpretation was appropriate. The hearing court thus granted the defendant's motion and the state appealed.

The appellate division was faced with the difficult task of evaluating the constitutionality of VTL section 415-a(5)(a) under the state search and seizure provision,[1175] in light of the United

1168. *Id.* at 174, 567 N.Y.S.2d at 739.

1169. *Id.*

1170. *Id.*

1171. *Id*

1172. *Id.* at 175, 567 N.Y.S.2d at 739-40.

1173. *Id.* at 175, 567 N.Y.S.2d at 740 (citing People v. Burger, 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986), *rev'd*, 482 U.S. 691 (1987)).

1174. *Id.* at 177, 567 N.Y.S.2d at 741 (quoting People v. Keta, 142 Misc. 2d 986, 994, 538 N.Y.S.2d 417, 422, (1989)).

1175. *See* N.Y. CONST. art. I, § 12. Article I, § 12 is identical to the fourth

States Supreme Court decision that held the statute constitutional under the Fourth Amendment.[1176] New York case law suggests that when the text of the state and federal constitutions is identical, as it is here, a court is required to engage in "noninterpretive analysis" before departing from the federal standard.[1177] To fully understand the court's reasoning, it is critical to first examine the federal standard detailed in *New York v. Burger*.[1178] Next, it is important to define the requirements of noninterpretive analysis. Finally, it is necessary to review the second department's application of the facts of *Keta* to the non-interpretive requirements.

Especially noteworthy is the second department's reluctance to engage in this line of reasoning. The court began its analysis by stating that the scope of rights afforded under the state constitution properly remains "the exclusive domain of the Court of Appeals."[1179] Accordingly, the appellate court's decision was restrained in deference to the court of appeals' position as the "policy-making tribunal" of New York State.[1180]

The court of appeals, in striking down VTL section 415-a(5)(a) in *People v. Burger*,[1181] found that the authorized searches could be "undertaken solely to uncover evidence of criminality and not to enforce a comprehensive regulatory scheme."[1182] It also found the statute did "little more than authorize general searches"[1183] and, in actuality, functioned primarily as a circumvention of the Fourth Amendment's warrant requirement by allowing the police to search for stolen property in automobile

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amendment of the United States Constitution.

1176. *See* New York v. Burger, 482 U.S. 691 (1987).

1177. *Keta*, 165 A.D.2d at 179, 567 N.Y.S.2d at 742; *see also People v. Alvarez*, 70 N.Y.2d 375, 378, 515 N.E.2d 898, 899, 521 N.Y.S.2d 212, 213 (1987); *People v. P.J. Video*, 68 N.Y.2d 296, 303, 501 N.E.2d 556, 560, 508 N.Y.S.2d 907, 911 (1986), *cert. denied*, 479 U.S. 1091 (1987).

1178. 482 U.S. 691 (1987).

1179. *Keta*, 165 A.D.2d at 177, 567 N.Y.S.2d at 741.

1180. *Id.* at 177-78, 567 N.Y.S.2d at 741.

1181. 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986) *rev'd*, 482 U.S. 691 (1987).

1182. *Id.* at 344, 493 N.E.2d 929, 502 N.Y.S.2d 705.

1183. *Id.*

junkyards.

The United States Supreme Court, however, in reversing this ruling in *New York v. Burger*,[1184] held that a "[s]tate can address a major social problem *both* by way of an administrative scheme *and* through penal sanctions."[1185] Therefore, the fact that a violator of VTL section 415-a(5)(a) suffered criminal penalties did not invalidate its administrative purpose of "seeking to ensure that vehicle dismantlers are legitimate businesspersons and that stolen vehicles and vehicle parts passing through automobile junkyards can be identified."[1186]

The Court noted that the vehicle dismantling business has been subject to pervasive government regulation, thus subjecting it to the lessened expectation of privacy inherent in "closely regulated" businesses.[1187] This lessened privacy expectation contributes to the relaxation of the Fourth Amendment's warrant requirement and permits the administrative search when three criteria are met:

> (1) [T]here must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made[;] (2) the warrantless inspections must be "necessary to further the regulatory scheme[;]" and (3) "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant."[1188]

The Supreme Court found VTL section 415-a constitutional because it met the required criteria. It concluded that the state has a substantial interest in closely regulating this business due to the significant social problem of automobile theft and its association with the vehicle dismantling industry.[1189] The Court then found

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1184. 482 U.S. 691 (1987).

1185. *Id.* at 712 (emphasis added). Warrantless administrative searches have been a recognized exception to the fourth amendment requirements as long as the authorizing statute serves a comprehensive, regulatory scheme. *Id.* at 702-03.

1186. *Id.* at 714.

1187. *Id.* at 698 n.11, 699-701.

1188. *Id.* at 702-03 (citations omitted).

1189. *Id.* at 708.

that the regulatory scheme appropriately served the state interest by controlling the major market for stolen automobiles and their parts.[1190] The Court further reasoned that the owners of dismantling businesses are made fully aware of the possibility of administrative searches upon obtaining their state licenses. Because those searches are conducted pursuant to the statute and "do not constitute discretionary acts by government officials,"[1191] section 415-a(5) provides a "'constitutionally adequate substitute for a warrant.'"[1192] Finally, the Court found that "the 'time, place, and scope' of the inspection is limited . . . to place appropriate restraints upon the discretion of the inspecting officers."[1193]

In a dissenting opinion, Justice Brennan agreed with the court of appeals' analysis and stated that "[t]he fundamental defect in § 415-a(5) is that it authorizes searches intended solely to uncover evidence of criminal acts."[1194] He noted that the state used an administrative scheme to provide a pretext for searching without probable cause.[1195] Thus, he would have found VTL section 415-a unconstitutional under the Federal Constitution.

The *Keta* court was faced with the clear reasoning of the United States Supreme Court and was forced to review VTL section 415-a under the principle of "noninterpretive" analysis. It could not "'disregard the Supreme Court's decision merely because it disagree[d] with them or dislike[d] the result reached.'"[1196] In those instances, a court must balance "the historical significance and local character of the right in question . . . against . . . the desirability of consistency and uniformity in constitutional jurisprudence."[1197] Considerations of separate state law historically affording the individual greater protections at the

1190. *Id.* at 709.

1191. *Id.* at 711.

1192. *Id.* (quoting Donovan v. Dewey, 452 U.S. 594, 603 (1981)).

1193. *Id.* (quoting United States v. Biswell, 406 U.S. 311, 315 (1972)).

1194. *Id.* at 724.

1195. *Id.* at 725.

1196. *Keta*, 165 A.D.2d at 178, 567 N.Y.S.2d at 741 (quoting People v. Vilardi, 76 N.Y.2d 67, 80, 555 N.E.2d 915, 922, 556 N.Y.S.2d 518, 525 (1990) (Simons, J. concurring)).

1197. *Id. See also* Golden v. Clark, 76 N.Y.2d 618, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990).

state level,[1198] such as "'peculiar State or local concerns,'"[1199] or distinctive state attitudes towards a right,[1200] have each been utilized to expand individual rights on the state level over the minimum federal standards.

The *Keta* court noted that, in the past, the court of appeals has been most likely to offer greater individual protections at the state level in the area of fundamental rights. This is because fundamental rights have a "historically higher status in New York"[1201] and "affect a broad spectrum of the state's citizenry."[1202]

In contrast, the *Keta* court reasoned that the challenged statute affected only a small minority of citizens -- those engaged in the vehicle dismantling industry.[1203] Further, the court noted that this particular industry has been found by the legislature to be suspect and therefore subject to regulation, due to its connection to the stolen automobile trade. It found that the legislature was addressing the social problem of automotive theft by attacking and regulating its marketplace. For these reasons, the court could find no rationale for heightening protection for individuals subject to administrative searches of automobile junkyards. VTL section 415-a was, therefore, found to be constitutional under the New York Constitution.[1204]

Justice Harwood dissented, finding VTL section 415-a violative of the state constitution. He reasoned that the administrative searches actually led to criminal punishment and hence allowed police inspectors "cloaked by statute in administrative garb"[1205] to engage in warrantless searches for possible automobile thefts in

1198. *Id.* at 179, 567 N.Y.S.2d at 742.

1199. *Id.*

1200. *Id.*

1201. *Id.* at 180, 567 N.Y.S.2d at 742.

1202. *Id.*

1203. *Id.* at 180, 567 N.Y.S.2d at 743.

1204. *Id.* One week later, the second department affirmed its holding that VTL § 415-a was constitutional and denied a second state constitutional challenge in People v. Sessions, 170 A.D.2d 704, 567 N.Y.S.2d 116 (2d Dep't 1991).

1205. *Keta*, 165 A.D.2d at 184, 567 N.Y.S.2d at 745 (Harwood, J., dissenting).

New York City. Since the authorized inspections "do nothing more than enable police to ferret out crime,"[1206] he would have suppressed evidence resulting from these searches. He amply documented New York's "long tradition of interpreting our State Constitution to protect individual rights."[1207] Additionally, he stated his view that the appellate division could engage in constitutional analysis which might expand individual rights under the state constitution. He believes that this is often necessary and should be performed because for most cases in New York, the appellate division becomes the court of last resort for the parties.

THIRD DEPARTMENT

People v. Scott[1208]
(decided January 31, 1991)

Just prior to printing, this case was reversed by the New York Court of Appeals[1209] which concluded that the rule in *Oliver v. United States*[1210] "does not adequately protect fundamental constitutional rights."[1211] Under *Oliver*, "in areas outside the curtilage, an owner of 'open fields' enjoys no Fourth Amendment protection."[1212] The court claimed that "under the law of this State the citizens are entitled to more protection,"[1213] and held that "where landowners fence or post 'No Trespassing signs on their private property . . . or . . . indicate unmistakably that entry is not permitted, the expectation that their privacy rights will be respected and . . . free from unwanted intrusions is reasonable."[1214]

A criminal defendant alleged that his right to be protected

1206. *Id.* at 185, 567 N.Y.S.2d at 746 (Harwood, J., dissenting).
1207. *Id.* at 188, 567 N.Y.S.2d at 748 (citing People v. P.J. Video, 68 N.Y.2d 296, 501 N.E.2d 556, 508 N.Y.S.2d 907 (1986)).
1208. 169 A.D.2d 1023, 565 N.Y.S.2d 576 (3d Dep't 1991), *rev'd*, People v. Scott; People v. Keta, Nos. 6, 27, 1992 WL 62774 (N.Y. Apr. 2, 1992).
1209. People v. Scott; People v. Keta, Nos. 6, 27, 1992 WL 62774 (N.Y. Apr. 2, 1992).
1210. 466 U.S. 170 (1984).
1211. People v. Scott, 1992 WL 62774.
1212. *Id.*
1213. *Id.* at 6.
1214. *Id.* at 9.