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Searches and Seizure

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tween the latter and the house is as old as the common law."[1236] The Court distinguished the open fields from the curtilage[1237] and stated that no legitimate expectation of privacy attached to open fields.[1238] Therefore, the Court concluded that the government's intrusion upon the open fields did not violate the Fourth Amendment.[1239]

The Supreme Court reaffirmed the holding of *Hester* in *United States v. Oliver.*[1240] In *Oliver*, the Court stated that "open fields do not provide a setting for those intimate activities that the [Fourth] Amendment is intended to shelter from government interference or surveillance."[1241] The majority concluded that "the text of the Fourth Amendment and . . . the historical and contemporary . . . understanding of its purposes, . . . [does not create a] legitimate expectation that open fields will remain free from warrantless intrusion by government officers."[1242]

FOURTH DEPARTMENT

People v. Caruso[1243]
(decided June 7, 1991)

A criminal defendant alleged that his right to be protected against unreasonable searches and seizures under the state[1244] and federal[1245] constitutions was violated when police officers,

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1236. *Id.* at 59.

1237. In defining the extent of the home's curtilage, the Court looks at four factors:

> [T]he proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

United States v. Dunn, 480 U.S. 294, 301 (1987).

1238. *See Hester*, 265 U.S. at 258.

1239. *Id.* at 259.

1240. 466 U.S. 170, 178 (1984).

1241. *Id.* at 179.

1242. *Id.* at 181.

1243. 572 N.Y.S.2d 216 (4th Dep't 1991).

1244. N.Y. CONST. art. I, § 12.

1245. U.S. CONST. amend. IV.

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executing a search warrant on his residence, also searched the shed in the back of his home. The court held that the search of the shed at defendant's residence exceeded the scope of the search warrant.[1246] In so holding, the court stated that "[o]ne of the most fundamental characteristics of a search warrant is that '[t]he authority to search is limited to the place described in the warrant and does not include additional or different places.'"[1247]

Police officers, while executing a search warrant on defendant's residence, also searched the shed in back of the defendant's home. The warrant authorizing the search only described the defendant's residence.[1248] The defendant's motion to suppress evidence found in the shed was granted by the suppressing court and the prosecution appealed.

The court unanimously affirmed the order of the suppressing court and dismissed the indictment. The court stated that "[i]n order to protect the Constitutional right of privacy from arbitrary police intrusion, 'nothing should be left to the discretion of the searcher in executing the warrant.'"[1249] Instead, the court noted, "'[p]articularity is required in order that the executing officer can reasonably ascertain and identify the . . . places authorized to be seized.'"[1250] As a result, the indictment was dismissed pursuant to section 450.50(2) of the Criminal Procedure Law (CPL).[1251]

Under federal law "it is well settled that search warrants must be strictly construed. The authority to search is limited to the

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1246. *Caruso*, 572 N.Y.S.2d at 217.

1247. *Id.* (second alteration in original) (quoting Keiningham v. United States, 287 F.2d 126, 129 (D.C. Cir. 1960)).

1248. *Id.* The warrant described the residence to be searched as "[a] two story flat roof dwelling, first floor . . . cement block, 2nd story brown barn board . . . ." *Id.* The warrant also stated the street address of the defendant's residence and its location on the block. *Id.*

1249. *Id.* (citations omitted) (quoting People v. Nieves, 36 N.Y.2d 396, 401, 330 N.E.2d 26, 31, 369 N.Y.S.2d 50, 57 (1975)).

1250. *Id.* (quoting *Nieves*, 36 N.Y.2d at 401, 330 N.E.2d at 31, 369 N.Y.S.2d at 57 (citations omitted)).

1251. N.Y. CRIM. PROC. LAW § 450.50(2) (McKinney 1983). ("The taking of an appeal by the people . . . from an order suppressing evidence constitutes a bar to the prosecution of the accusatory instrument involving the evidence ordered suppressed . . . .").

place described in the warrant and does not include different or additional places."[1252] To ensure that the search is as limited as possible, the warrant's particularity must be such "that the officer . . . can with reasonable effort ascertain and identify the place intended [to be searched]."[1253] Because the Fourth Amendment serves to protect the individual's privacy interest, "[w]hen investigators fail to limit themselves to the particulars in the warrant, . . . the warrant['s] limitation becomes a practical nullity."[1254] Therefore, "the search itself must be conducted in a reasonable manner, appropriately limited to the scope and intensity called for by the warrant."[1255]

However, in *United States v. Bonner*,[1256] the First Circuit reasoned that "search warrants . . . should be considered in a common sense manner, and hypertechnical readings should be avoided."[1257] In *Bonner*, the warrant contained the word "properties" instead of "premises," but the court found the words were "sufficiently synonymous to be inter-

1252. *Keiningham*, 287 F.2d at 129; *see also* Bivens v. Six Unkown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 394 n.7 (1971) ("[T]he Fourth Amendment confines an officer executing a search warrant strictly within the bounds set by the warrant."); United States v. Heldt, 668 F.2d 1238, 1262 (D.C. Cir. 1981) (it is "well accepted that the authority to search granted by any warrant is limited to the specific places described"), *cert. denied*, 456 U.S. 926 (1982); United States v. Principe, 499 F.2d 1135, 1137 (1st Cir. 1974) (authority to search limited solely to places described in warrant).

1253. Steele v. United States, 267 U.S. 498, 503 (1925).

1254. *Heldt*, 668 F.2d at 1257. The court went on to say that "[o]bedience to the particularity requirement . . . in . . . executing a search warrant is therefore essential to protect against the centuries-old fear of general searches and seizures." *Id. See also* Wolf v. Colorado, 338 U.S. 25, 27 (1949) (core of the fourth amendment is to protect privacy rights from arbitrary police intrusion), *overruled by* Napp v. Ohio, 367 U.S. 643 (1961); Marron v. United States, 275 U.S. 192 (1927) (nothing should be left to discretion of searcher executing warrant), *overruled by* Harris v. United States 331 U.S. 145 (1947).

1255. *Heldt*, 668 F.2d at 1256.

1256. 808 F.2d 864 (1st Cir. 1986), *cert. denied*, 481 U.S. 1006 (1987).

1257. *Id.* at 868 (citing Spinelli v. United States, 393 U.S. 410, 419 (1969); United States v. Ventresca, 380 U.S. 102, 108 (1965)).

changeable."[1258] The properties listed on the warrant to be searched included a house, trailer, and a barn. Also mentioned in the warrant, but not listed under properties to be searched, was a detached two car garage. However, the court found that the warrant was "sufficient to embrace the garage located on the Bonner property."[1259] The *Bonner* court stated that had the garage not been mentioned in the warrant, "it [nevertheless] would have been reasonably considered within the scope of the warrant" because it was clear from the affidavit that the agents intended to search the garage.[1260]

The New York State Constitution, similar to its federal counterpart, requires that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched . . . ."[1261] In *People v. Green*, the court of appeals stated that a critical and fundamental characteristic of a search warrant is that "[t]he authority to search is limited to the place described in the warrant and does not include additional or different places."[1262]

In *People v. Nieves*,[1263] the court of appeals addressed the particularity requirement. The court stated that the purpose of the particularity requirement was to combat the "evils associated with the use of general warrants in England and the detested writs of assistance in the Colonies."[1264] To protect the constitutional

1258. *Id.*

1259. *Id.*

1260. *Id.* For additional cases where search warrants authorized the search of premises at a certain address that were held to include buildings standing on that land see United States v. Williams, 687 F.2d 290, 293 (9th Cir. 1982) (holding that a warrant describing the geographical location to be searched by commonly accepted mining claim numbers was a reasonable description and means of identifying the premises to be searched); United States v. Meyer, 417 F.2d 1020, 1023 (8th Cir. 1969) (stating that "[t]he word 'premises' when used to describe an estate in land almost invariably refers to land and the tenements or appurtances thereto").

1261. N.Y. CONST. art. I, § 12; *see also* U.S. CONST. amend. IV.

1262. *Id.* at 499, 310 N.E.2d at 534-35, 354 N.Y.S.2d at 935 (quoting Keiningham v. United States, 287 F.2d 126, 129 (D.C. Cir. 1960)).

1263. 36 N.Y.2d 396, 330 N.E.2d 26, 369 N.Y.S.2d 50 (1975).

1264. *Id.* at 400, 330 N.E.2d at 31, 369 N.Y.S.2d at 56.

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right of privacy from arbitrary police intrusion, the court stated that "nothing should be left to the discretion of the searcher in executing the warrant."[1265] Therefore, "particularity is required in order that the executing officer can reasonably ascertain and identify . . . the persons or places authorized to be searched and the things authorized to be seized."[1266] However, the *Nieves* court noted that particularity does not require "hypertechnical accuracy and completeness of description . . . ."[1267] Instead, the descriptions in the warrant should be sufficiently definite to permit the searcher to identify the premises, persons or things that are going to be searched.[1268]

Under both the state and federal constitutions, the defendant's right to privacy is protected against arbitrary police intrusion. The authority to search is limited to the area described in the warrant and does not include additional or different places. As such, the discretion of the searcher is limited when executing a warrant. While particularity is required to provide the officer with a reasonable description of the area intended by the warrant, the officer need not abandon his or her common sense when interpreting the warrant's scope.

1265. *Id.* at 401, 330 N.E.2d at 31, 369 N.Y.S.2d at 57 (citing Marron v. United States, 275 U.S. 192, 196 (1927), *overruled by* Harris v. United States 331 U.S. 145 (1947)).

1266. *Id.* (citing Steele v. United States, 267 U.S. 498, 503 (1925)); *see also* People v. Henley, 135 A.D.2d 1136, 523 N.Y.S.2d 258 (4th Dep't 1987), *appeal denied,* 71 N.Y.2d 897, 523 N.E.2d 314 (1988).

1267. *Nieves,* 36 N.Y.2d at 401, 330 N.E.2d at 31, 369 N.Y.S.2d at 57.

1268. *Id.; see also Henley,* 135 A.D.2d at 1136, 523 N.Y.S.2d at 259 (noting that "[t]he constitutional requirements will be satisfied if there is a non-confusing description by which any officer executing the warrant could not be mislead . . . ").

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