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Searches and Seizure

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SUPREME COURT

QUEENS COUNTY

People v. Craig¹²⁶⁹
 (decided June 26, 1991)

The defendant, the manager of a licensed used car dealership and automotive repair and body shop, moved to suppress evidence obtained from a warrantless, administrative search of the premises conducted pursuant to Sections 435 and 436 of the Charter Code of the City of New York.¹²⁷⁰ He claimed that these searches had been found to be violative of the New York State Constitution¹²⁷¹ by the New York Court of Appeals in *People v. Burger*.¹²⁷² The court, in *Craig*, held that section 436 of the City Charter was unconstitutional, thus, searches conducted pursuant to it are also unconstitutional.¹²⁷³ As a result, defendant's motion to suppress was granted.¹²⁷⁴

1269. 573 N.Y.S.2d 390 (Sup. Ct. Queens County 1991).

1270. *Id.* at 391; Admin. Code and Charter of the City of New York, N.Y. COMP. CODES R. & REGS. §§ 435, 436 (1991). The court contrasted the defendant's business with that of the defendant in *People v. Keta*, whose business was a vehicle dismantling yard and had challenged his search under the Vehicle and Traffic Law § 415-a. *Craig*, 573 N.Y.S.2d at 391 (discussing *People v. Keta*, 165 A.D.2d 172, 174, 567 N.Y.S.2d 738, 739 (2d Dep't 1991), *rev'd*, Nos. 6, 27, 1992 WL 62774 (N.Y. Apr. 2, 1992); see N.Y. VEH. TRAF. LAW § 415-a (McKinney 1986). See discussion under *People v. Keta* regarding this issue, *supra* notes 1159-207 and accompanying text.

1271. N.Y. CONST. art. I, § 12.

1272. 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 792 (1986), *rev'd on other grounds*, 482 U.S. 691 (1987).

1273. *Craig*, 573 N.Y.S.2d at 393.

1274. *Id.* at 393. The supreme court in *Craig* specifically noted that the United States Supreme Court had overruled the New York Court of Appeals' decision in *Burger*, concerning VTL § 415-a, but it did not overrule the court of appeals' decision concerning the city charter. *Id.* In *Burger*, the court of appeals found sections 415-a and 436 of the City Charter unconstitutional in that they do not advance any "comprehensive regulatory scheme" and serve merely as a pretext for uncovering evidence of criminality. *Id.* at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705. See also *People v. Keta*, 165 A.D.2d

The police conducted a random, administrative search of defendant's repair shop. Upon request, defendant produced his second hand dealer's license, and explained the nature of his business. While in the repair area, police officers observed a number of used automotive parts. One of these parts belonged to a car reported as stolen.¹²⁷⁵ The owners at the shop were called and were unable to produce the required "police book"¹²⁷⁶ recording the part in question. Thus, defendant was arrested for criminal possession of stolen property in the fourth degree and for falsifying business records in the second degree.¹²⁷⁷

The court reasoned that the "[a]dministrative purpose [of the police] visit was merely a pretext for an invasive search for evidence of criminal activity."¹²⁷⁸ The court especially noted that the police first inspected the automobile parts and then asked for the police book.¹²⁷⁹ This suggests that the search was truly for criminal investigative purposes, which is precisely the type of search that is proscribed by constitutional guarantees. The court noted that although Vehicle and Traffic Law section 415-a has been upheld by the United States Supreme Court,¹²⁸⁰ the New York Court of Appeals' ruling that held section 436 unconstitutional was not disturbed.¹²⁸¹ In fact, the court quoted Justice Brennan's dissenting opinion in *Burger*, his agreement "with the analysis of the New York Court of Appeals, holding this provision is plainly unconstitutional."¹²⁸² Justice Brennan also

172, 567 N.Y.S.2d 738, 739 (2d Dep't 1991).

1275. *Craig*, 573 N.Y.S.2d at 392.

1276. *Id.* The administrative requirements of the City Charter include the record keeping of a police book to identify automotive parts. Admin. Code and Charter of the City of New York, N.Y. COMP. CODES R. & REGS. tit. 22, § 436 (1991).

1277. *Craig*, 573 N.Y.S.2d at 392.

1278. *Id.*

1279. *Id.* at 391-92.

1280. *See New York v. Burger*, 482 U.S. 691 (1987). Vehicle and Traffic Law § 415-a has been upheld as a constitutional statute with the legitimate state purpose of regulating the vehicle dismantling business which requires supervision due to the serious problem of automobile theft in New York. *Id.*

1281. *Craig*, 573 N.Y.S.2d at 393.

1282. *Id.* (quoting *Burger*, 482 U.S. at 718 n.1 (Brennan, J., dissenting)).

stated that "the government may not use an administrative inspection scheme to search for criminal violations."¹²⁸³ Administrative searches that are conducted without valid purposes allow the state to circumvent the Fourth Amendment's warrant requirement. Because the evidence was obtained as a result of an illegal search, defendant's motion to suppress was granted.¹²⁸⁴

FAMILY COURT

NEW YORK COUNTY

*In re Marrhonda G.*¹²⁸⁵
(decided July 25, 1991)

Defendant, a juvenile, was arrested and charged with weapons possession.¹²⁸⁶ At her pre-trial suppression hearing, she argued that her right to be protected against unreasonable searches and seizures was violated because the police, without a warrant, opened her closed duffel bag and removed four weapons and 150 rounds of ammunition.¹²⁸⁷ The court held that the defendant's right against unreasonable searches and seizures was not violated.¹²⁸⁸ The court analyzed this case under the "plain touch" doctrine -- a corollary to the "plain view" doctrine.¹²⁸⁹

The defendant was being detained at the Youth Services Unit office in Manhattan after a Port Authority police officer suspected that she was a runaway and sought to verify the information she provided him.¹²⁹⁰ Defendant was ordered to "put down" the duffel bag she was carrying and "to sit down in

1283. *Burger*, 482 U.S. 691 at 724 (Brennan, J., dissenting).

1284. For a more detailed discussion of this issue, see the cases analysis of *People v. Keta*, *supra* notes 1159-207 and accompanying text.

1285. 575 N.Y.S.2d 425 (Fam. Ct. New York County 1991).

1286. *Id.* at 427.

1287. *Id.* See N.Y. CONST. art. I, § 12; U.S. CONST. amend. IV.

1288. *Marrhonda*, 575 N.Y.S.2d at 432.

1289. *Id.* at 429-31.

1290. *Id.* at 427.