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Search and Seizure, Court of Appeals, People v. Gonzalez

The federal law and state law regarding searches and seizures are similar in more than just wording. Both laws recognize that ". . . whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."[57] Additionally, a reasonable suspicion for a search is required to justify such search under the federal and state constitutional provisions.

People v. Gonzalez[58]
(decided May 2, 1996)

On December 14, 1990, defendant William Gonzalez was convicted of second degree murder, first degree manslaughter and first degree attempted robbery in connection with a failed holdup and shooting of a Bronx taxicab driver.[59] Gonzalez was sentenced to a prison term of 25 years to life for the murder conviction, 8 1/3 to 25 years for the manslaughter conviction and 5 to 15 years for the attempted robbery conviction.[60] These prison terms were to be served concurrently.[61] Gonzalez appealed to the Appellate Division, First Department, on the grounds that the trial court acted improperly when it failed to suppress evidence that was acquired by New York police detectives in violation of Gonzalez's right to be free from unreasonable searches and seizure.[62] These rights are enumerated in the Fourth Amendment of the United States Constitution[63] and in Article I section 12 of the New York State Constitution.[64]

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57. People v. Ingle, 36 N.Y.2d 413, 418, 330 N.E.2d 34, 42, 369 N.Y.S.2d 67, 72 (citing Terry v. Ohio, 392 U.S. at 16).

58. 88 N.Y.2d 289, 667 N.E.2d 323, 644 N.Y.S.2d 673 (1996).

59. People v. Gonzalez, 210 A.D.2d 83, 620 N.Y.S.2d 31, 32 (1st Dep't), *rev'd* 88 N.Y.2d 289, 667 N.E.2d 323, 644 N.Y.S.2d 673 (1996).

60. *Id.*

61. *Id.*

62. *Gonzalez*, 88 N.Y.2d at 291, 667 N.E.2d at 324, 644 N.Y.S.2d at 674.

63. U.S. CONST. amend. IV. The Fourth Amendment provides in pertinent part: "The right of the people to be secure in their persons, houses,

The First Department affirmed the convictions holding that "[t]he police properly relied on defendant's accomplices sister's apparent authority to consent [sic] the search of the apartment that defendant occasionally shared with his accomplice, and which resulted in recovery of the gun that defendant seeks to suppress . . . ."[65] This case reached New York's highest court after an associate judge of the court of appeals granted leave for the court to hear the defendant's appeal.[66]

The court of appeals reversed the decision of the appellate division court and held that "the People failed to establish . . . [that a co-habitant of an apartment has] actual authority to consent to the seizure of the duffel bag and its contents, as a matter of law."[67] The court of appeals ordered that the defendant's motion to suppress the evidence be granted, and the defendant be granted a new trial.[68]

The defendant, William Gonzalez, and his accomplice, Sean DeJesus, were identified by eyewitnesses as the people who shot and tried to rob a taxicab driver in the Hunt's Point area of the Bronx.[69] The defendant, Gonzalez, was in police custody and Sean DeJesus was still at large when two detectives went to look for DeJesus at his Bronx apartment.[70] Sean DeJesus shared his apartment with other members of his family, and when the police arrived they were granted entry to the apartment by Sean's sister, Kim DeJesus.[71] The police informed Kim DeJesus that they were looking for her brother Sean in connection with the

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papers and effects, against unreasonable searches and seizures, shall not be violated . . . ." *Id.*

64. N.Y. CONST. art. I, § 12. This section provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ." *Id.*

65. *Gonzalez*, 210 A.D.2d at 83, 620 N.Y.S.2d at 32.

66. *Gonzalez*, 88 N.Y.2d at 292, 667 N.E.2d at 324, 644 N.Y.S.2d at 674.

67. *Id.* at 294, 667 N.E.2d at 325, 644 N.Y.S.2d at 675.

68. *Id.* at 297, 667 N.E.2d at 328, 644 N.Y.S.2d at 678.

69. *Id.* at 291, 667 N.E.2d at 324, 644 N.Y.S.2d at 674.

70. *Id.*

71. *Id.*

shooting of a taxicab driver.[72] Kim told the detectives that the defendant, William Gonzalez, occasionally slept in her brother's room and stayed in the apartment "on and off" for up to a week at a time.[73] The detectives asked if she had seen either her brother or Gonzalez with a gun.[74] Kim replied that Sean had shown her daughter a shotgun which had upset Kim, but she thought that her brother had gotten rid of the gun.[75] Kim was then asked by the detectives if they could "look in Sean's bedroom."[76] Kim DeJesus then showed the detectives the bedroom and pointed out where Sean DeJesus and the defendant slept when they stayed at the apartment.[77] One of the detectives lifted the mattress from the bed used by the defendant and found a zipped duffel bag.[78] The detective unzipped the bag and found a twelve gauge shotgun and ammunition.[79] This was the same type of weapon used to shoot and kill the taxicab driver.[80]

At the suppression hearing before the trial, the defendant moved to suppress the evidence found at the apartment because it was obtained through a constitutionally invalid search.[81] The defendant's motion was denied and the shotgun and the ammunition were introduced as evidence at trial.[82] The trial court held that Kim DeJesus had "apparent authority" to consent to the search of the apartment.[83] As a result, the court concluded that both the search of the apartment and seizure of the shotgun and ammunition were conducted properly by the police.[84]

The defendant first appealed to the Appellate Division, First Department, which affirmed the trial court's decision and

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72. *Id.*
73. *Id.* at 292, 667 N.E.2d at 324, 644 N.Y.S.2d at 674.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 291, 667 N.E.2d at 323, 644 N.Y.S.2d at 674.
81. *Id.* at 292, 667 N.E.2d at 323, 644 N.Y.S.2d at 674.
82. *Id.*
83. *Id.*
84. *Id.*

held that "the police 'properly relied on . . . [the] sister's apparent authority to consent [t]o the search . . . .'"[85] The First Department relied on the court of appeals' decision in *People v. Adams*,[86] where it held that a good faith search consented to by a third party with apparent authority was valid.[87]

Judge Levine, who wrote the opinion for the court of appeals, began his analysis by examining the holding in *United States v. Matlock*.[88] In *Matlock*, the U.S. Supreme Court held that valid consent to search an area used by more than one person could be given by any of the persons using the area so long as it was reasonable for any person using the common area to assume that a search could be consented to by another user of the common area.[89] Judge Levine examined Justice O'Connor's concurring opinion in *United States v. Karo*.[90] In *Karo*, Justice O'Connor stated that "[a] homeowner's consent to a search of the home may not be effective consent to a search of a closed object inside the home."[91] Justice O'Connor cited *Matlock* to point out that effective consent could only be given by someone who had "common authority over . . . the premises or effects sought to be inspected."[92] In *Matlock*, the court emphasized that in order for a person to give valid consent, that person must have "mutual use" or "joint control" of the property to be searched.[93]

Judge Levine distinguished the facts of the instant case from *Adams*.[94] In *Adams*, the police searched the defendant's apartment only after a specific request to search the apartment was made by the defendant's girlfriend.[95] The defendant's

85. *Id.*

86. 53 N.Y.2d 1, 422 N.E.2d 537, 439 N.Y.S.2d 877, *cert denied*, 454 U.S. 854 (1991).

87. *Id.* at 10, 422 N.E.2d at 541, 439 N.Y.S.2d at 881.

88. 415 U.S. 164 (1976).

89. *Id.* at 171.

90. 468 U.S. 705 (1984).

91. *Id.* at 725.

92. *Id.*

93. *Matlock*, 415 U.S. at 171.

94. *Gonzalez*, 88 N.Y.2d at 297, 667 N.E.2d at 327, 644 N.Y.S.2d at 677.

95. *Id.*

girlfriend feared that the defendant would return to the apartment, retrieve a weapon and inflict harm upon her.[96] The girlfriend had a key to the apartment and the defendant was in the vicinity having just fired four shots at a policeman.[97] Judge Levine found that, in the instant case, Kim DeJesus was not in fear of harm because she believed that Sean DeJesus had disposed of the shotgun.[98] Additionally, the police searched the apartment after seeking consent rather than being requested to do so by someone with apparent authority to grant consent.[99] Finally, the court held that the prosecution failed to show that the third party had any authority to consent to a search of the zippered duffel bag.[100]

The court emphasized that a reasonable person could not expect privacy from a consented to search of common areas but could reasonably expect that items stored within closed containers would not be subject to searches through the consent of third parties.[101]

The decision in the instant case is consistent with the U.S. Supreme Court's decisions in *Matlock* and *Karo*. In *Matlock*, the Court allowed valid consent to be granted by third parties who shared common control and use of common areas with the defendant.[102] In *Karo*, the Court took note that a valid consent by a third party to search a common use area did not authorize the search of closed containers within the home where the third party consenting to the search did not have joint use and control over the container.[103]

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96. *Id.*
97. *Id.*
98. *Id.* at 296, 667 N.E.2d at 327, 644 N.Y.S.2d at 677.
99. *Id.*
100. *Id.* at 293, 667 N.E.2d at 325, 644 N.Y.S.2d at 675.
101. *Id.* (citing United States v. Block 590 F.2d 535, 541 (4th Cir. 1978)).
102. *Id.* at 293, 667 N.E.2d at 325, 644 N.Y.S.2d at 675.
103. *Karo,* 468 U.S. at 725 (citing *Matlock,* 415 U.S. at 171).