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Searches and Seizures

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, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

U.S. CONST. amend. IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

COURT OF APPEALS

People v. Banks[1]
(decided May 4, 1995)

This action was brought by leave of a justice of the Appellate Division, Third Department, in order to appeal the denial of the defendant's motion to suppress physical evidence seized by the State Police.[2] The defendant claimed that his right to be free from unreasonable searches and seizures had been violated under both the United States[3] and New York State[4] Constitutions.[5]

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1. 85 N.Y.2d 558, 650 N.E.2d 833, 626 N.Y.S.2d 986, *cert. denied*, 116 S. Ct. 187 (1995).

2. *Id.* at 561, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

3. U.S. CONST. amend. IV. The Fourth Amendment states 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.*

4. N.Y. CONST. art. I, § 12. Article I, section 12 provides in pertinent part that: "The right of the people to be secure in their persons, houses, papers

Defendant argued that he was involuntarily detained by State Police after a driver's license and stolen vehicle radio check came back negative. The subsequent search of the automobile that the defendant had rented resulted in the discovery of a large amount of cocaine.[6] More specifically, the defendant claimed that: (1) the continued detention after the initial stop of the defendant's vehicle was an illegal seizure;[7] and (2) the consent to the search of the vehicle was acquired during this illegal seizure and, as such, the evidence obtained was the fruit of this illegal detention.[8] The New York Court of Appeals held that the continued detention of the defendant was not justified[9] and consequently, the evidence ultimately seized should have been excluded.[10] Accordingly, the order of the appellate division was reversed, and the court of appeals granted the defendant's motion to suppress.[11]

On September 14, 1991, State Trooper Cuprill was in a marked patrol car parked on the median of the New York State Thruway in the Town of Bethlehem, Albany County.[12] At about 1:00 p.m., Trooper Cuprill pursued and stopped a blue Chevrolet after noticing that the driver of the car was not wearing his seat belt.[13] After pulling the car off the highway, the defendant sat up from a reclining position in the front passenger seat and Cuprill observed that he was also not wearing his seat belt.[14]

At the direction of Trooper Cuprill, Jones, the driver, exited the Chevrolet and presented his operator's license and vehicle

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and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ." *Id.*

5. *Id.* at 561, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.
6. *Id.* at 560-61, 650 N.E.2d at 834, 626 N.Y.S.2d at 987.
7. *Id.* at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.
8. *Id.* at 562-63, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.
9. *Id.* at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.
10. *Id.* at 563, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.
11. *Id.* at 563, 650 N.E.2d at 836, 626 N.Y.S.2d at 989.
12. *Id.* at 560, 650 N.E.2d at 834, 626 N.Y.S.2d at 987.
13. *Id.* The driver of the car was the co-defendant Jones. *Id.*
14. *Id.*

registration.[15] He also produced a rental agreement for the car which showed that the defendant was the lessee.[16] After Cuprill informed him that he was stopped for a seat belt violation, Jones was questioned concerning where he was from and where he was going.[17] Jones responded that he was completing a one-day trip from New York City, where he dropped his niece off at college, and was headed back to Buffalo.[18] The Trooper then instructed the defendant, Banks, to exit the vehicle and, pursuant to his request to produce a form of identification, the defendant handed Cuprill a valid New York State driver's license.[19] Cuprill, after ordering the defendant back to the car, ran a license suspension revocation check on the licenses presented by Jones and the defendant, as well as a check on the status of the vehicle, all of which came back negative.[20]

Trooper Cuprill then started to write two tickets for the seat belt violations. However, instead of issuing them immediately, he decided that he "wanted to go through the vehicle" and requested a backup officer for a possible vehicle search.[21] When the backup officer arrived, Cuprill ordered Jones to return to the patrol car and handed him the two tickets.[22] Cuprill asked if the car contained any drugs or weapons and Jones responded by

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15. *Id.* "Jones produced a nonpicture New York operator's license." *Id.* His true identity was not discovered until after his arrest. *Id.* at 560 n.*, 650 N.E.2d at 834 n.*, 626 N.Y.S.2d at 987 n.*.

16. *Id.* at 560, 650 N.E.2d at 834, 626 N.Y.S.2d at 987.

17. *Id.*

18. *Id.*

19. *Id.* At the suppression hearing, Trooper Cuprill testified that the defendant appeared to be "very nervous and agitated, staring at the Trooper's sidearm." *Id.* The defendant was also questioned about where he was from and where he was going, and he responded that "they were en route from the New York/New Jersey area, had spent *a couple of days* in New York City and were returning to the Buffalo area." *Id.* at 561, 650 N.E.2d at 834, 626 N.Y.S.2d at 987 (emphasis added). The Trooper retained the operator's license of both occupants and also retained the rental document. *Id.* at 560-61, 650 N.E.2d at 834, 626 N.Y.S.2d at 987.

20. *Id.* at 561, 650 N.E.2d at 834, 626 N.Y.S.2d at 987.

21. *Id.* The defendant and Jones waited in their car without being told the reason for the delay. *Id.*

22. *Id.*

stating that there was nothing in the car, but that the officers could go ahead and look.[23] The subsequent search resulted in the discovery of a bag containing a half of a kilogram of cocaine under the driver's seat.[24]

The defendant's motion to suppress the cocaine was denied by the supreme court because it determined that Trooper Cuprill's initial stop of the car was justified after he observed that the driver violated the law by not wearing his seat belt.[25] The court also determined that continued detention was justifiable in light of the inconsistencies in the responses to the questions regarding the origin, length and destination of their trip.[26] Finally, the validity of Jones' consent was upheld based on the fact that Jones had authority to give such consent and did so voluntarily.[27]

First, the court of appeals, *sua sponte*, addressed the issue of whether the defendant had standing to challenge the search and seizure.[28] The United States Supreme Court, in *Rakas v. Illinois*,[29] defined the scope of the interest protected by the Fourth Amendment as a legitimate expectation of privacy.[30] In *Rakas*, the Court used the legitimate expectation of privacy analysis as the initial inquiry in determining whether a defendant has standing to object to a search or seizure.[31] The New York Court of Appeals, in interpreting the New York State Constitution, has held that "as a matter of State constitutional law, a defendant seeking to challenge a search and

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23. *Id.* Trooper Cuprill then asked Jones to sign a completed State Police Consent to Search form, which he unwittingly did. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* The court also stated that the nervousness of the defendant raised a "reasonable suspicion of criminality . . . justifying [the] continued detention." *Id.*

27. *Id.* The appellate division affirmed with two justices dissenting. *Id. See* People v. Banks, 202 A.D.2d 902, 609 N.Y.S.2d 420 (3d Dep't 1994).

28. *Banks*, 85 N.Y.2d at 561-62, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

29. 439 U.S. 128 (1978).

30. *Id.* at 143-44 n.12. The Court described this expectation of privacy as one society is prepared to recognize as reasonable. *Id.*

31. *Id.* at 143.

seizure . . . [is] required to demonstrate a personal legitimate expectation of privacy in the searched premises."[32] Thus, the proper inquiry into whether a person had a legitimate expectation of privacy should consider such factors as whether the person took precautions to maintain privacy, the manner in which he or she used the premises and whether he or she had the right to exclude other persons from the premises or the property searched.[33]

Based on the foregoing analysis, the court of appeals concluded that the "[d]efendant, as the lessee of the automobile searched, had a possessory interest in, dominion and control over and the right to exclude others from the vehicle"[34] and "the defendant clearly had a legitimate expectation of privacy with respect to the interior of the vehicle and its contents sufficient to give him standing to challenge the search and seizure."[35] Therefore, the defendant did have standing to raise his claim against the government.

The first claim made by the defendant was that the initial stop of the vehicle was not proper and that the continued detention constituted an illegal seizure and, thus, was not justified.[36] The court, in determining whether or not the traffic stop was legal, started its analysis by noting that "[a] traffic stop constitutes a limited seizure of the person of each occupant."[37] In *People v.*

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32. People v. Wesley, 73 N.Y.2d 351, 357, 538 N.E.2d 76, 79, 540 N.Y.S.2d 757, 760 (1989) (citing People v. Ponder, 54 N.Y.2d 160, 429 N.E.2d 735, 445 N.Y.S.2d 57 (1981)). In *Wesley*, the court of appeals noted that there have been many cases where a defendant's possession of the seized property was evidenced through dominion and control, but his or her expectation of privacy in the searched premises was not sufficiently legitimate to "invoke the remedy of suppression reserved for those asserting a violation of personal Fourth Amendment rights." *Id.* at 358, 538 N.E.2d at 80, 540 N.Y.S.2d at 761.

33. *Rakas*, 439 U.S. at 148-50.

34. *Banks*, 85 N.Y.2d at 561, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

35. *Id.* at 561-62, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

36. *Id.* at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

37. *Id.*

May,[38] the court determined that the defendant was effectively "seized" when the police ordered the defendant to pull his car over to the side of the road. The court further held that this type of stop or seizure was only proper if the officers had a reasonable suspicion of criminal activity.[39] Here, the *Banks* court held that the initial traffic stop was in fact justified, stating that "Trooper Cuprill's observations of Jones' seat belt violation justified the initial stop of Jones and [the] defendant in the vehicle."[40]

The court next addressed the claim that the continued detention constituted an unjustified limited seizure of the person and determined that such seizure was illegal.[41] The court referred to *United States v. Sharpe*,[42] where the United States Supreme Court articulated a dual inquiry for determining the reasonableness of an investigatory stop.[43] Under this inquiry, the evaluation of an investigatory stop looks to "whether the police action was justified at its inception and whether the stop was *reasonably related in scope* to the circumstances which justified the initial interference."[44]

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38. 81 N.Y.2d 725, 727, 609 N.E.2d 113, 115, 593 N.Y.S.2d 760, 762 (1992).

39. *Id. See* People v. Harrison, 57 N.Y.2d 470, 476, 443 N.E.2d 447, 450, 457 N.Y.S.2d 199, 202 (1982). In *Harrison*, the court of appeals held that where the police forcibly detain or constructively stop or exercise restraint over an individual, there must be some articulable facts sufficient to establish reasonable suspicion that the person is involved in criminal acts or posed some danger to the officers. *Id.*

40. *Banks*, 85 N.Y.2d at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988. *See* N.Y. VEH. & TRAF. LAW § 1229(c) (McKinney 1988) (mandating that the driver of a vehicle and all other front seat passengers be restrained by a safety belt).

41. *Banks*, 85 N.Y.2d at 567, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

42. 470 U.S. 675 (1985) (holding that police must pursue an investigation in a diligent and reasonable manner likely to confirm or dispel suspicions quickly).

43. *Id.* at 682.

44. *Id.* (citing Terry v. Ohio, 392 U.S. 1, 20 (1968)) (emphasis added). In *Terry*, the Court held that the scope of the search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible. *Terry*, 392 U.S. at 19. *See also* Florida v. Royer, 460 U.S. 491 (1983) (plurality opinion). In *Royer*, the Court held that the "reasonableness requirement of the

In *People v. Milaski*,[45] the court of appeals held that state troopers had a reasonable suspicion to justify the stop of the defendant's vehicle, but concluded that they had no justification to warrant a continued detention once the defendant had explained his conduct, produced his driver's license, and identified the owner of the car, which was checked via radio.[46] "At this point, the inquiry justified by the initiating circumstances had been exhausted, and no evidence of criminal conduct on the defendant's part had been discovered."[47]

In applying this test, the *Banks* court found that "once [Trooper] Cuprill's license and stolen vehicle radio check came back negative and he prepared the traffic tickets for seat belt violations, the initial justification for seizing and detaining defendant and Jones was exhausted."[48] The court determined that the trooper forced the defendant and Jones to remain at the scene by retaining their licenses while awaiting the arrival of the requested backup officers in violation of their constitutional rights.[49] It concluded that the actions of the defendant, specifically his nervousness and the inconsistencies between his answers to Trooper Cuprill's questions and those of Jones, did not, "as a matter of law, provide a basis for reasonable suspicion of criminality."[50]

The court found the detention of the defendant to be illegal, then proceeded to address the issue of whether the consent given by the defendant was insufficient, which would require

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Fourth Amendment requires no less when the police action is a seizure permitted on less than probable cause because of legitimate law enforcement interests. The scope of the detention must be carefully tailored to its underlying justification." *Id.* at 500.

45. 62 N.Y.2d 147, 464 N.E.2d 472, 476 N.Y.S.2d 104 (1984).

46. *Id.* at 156, 464 N.E.2d at 476, 476 N.Y.S.2d at 109.

47. *Id.*

48. People v. Banks, 85 N.Y.2d 558, 562, 650 N.E.2d 833, 835, 626 N.Y.S.2d 986, 988, *cert. denied*, 116 S. Ct. 187 (1995).

49. *Id.*

50. *Banks*, 85 N.Y.2d at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988. *See* People v. Milaski, 62 N.Y.2d 147, 155-56, 464 N.E.2d 472, 476, 476 N.Y.S.2d 104, 108 (1984).

suppression of the seized evidence.[51] In *Florida v. Royer*,[52] the United States Supreme Court held that consent to search "given only after . . . [being] unlawfully confined, was ineffective to justify the search" in the absence of probable cause.[53] In *Royer*, the defendant was stopped in the Miami International Airport because detectives believed that he fit the so-called "drug courier profile."[54] The detectives held the defendant for approximately fifteen minutes while questioning him.[55] Towards the end of the questioning, one detective asked the defendant if "he objected to the detective opening the second suitcase."[56] Royer responded by saying "[n]o, go ahead," and upon opening it, marihuana was found.[57] The Court affirmed the decision of the District Court of Appeals of Florida,[58] which held that:

> Royer had been involuntarily confined within the small room without probable cause; that the involuntary detention had exceeded the limited restraint permitted by *Terry v. Ohio* at the time his consent to the search was obtained; and that the consent to search was therefore invalid because tainted by the unlawful confinement.[59]

Similarly, in *People v. Hollman*,[60] consent to search the defendant's bag was held to be invalid because "the defendant's behavior . . . was certainly not so suspicious as to warrant the further intrusion . . . [and] the defendant's consent was a product of the improper police inquiry."[61] In *People v. Gonzalez*,[62] the court stated that the proper inquiry to determine the voluntariness

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51. *Banks*, 85 N.Y.2d at 562, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.
52. 460 U.S. 491 (1983).
53. *Id.* at 497.
54. *Id.* at 493.
55. *Id.* at 494.
56. *Id.*
57. *Id.* at 494-95.
58. *Id.* at 508.
59. *Id.* at 495 (citing Terry v. Ohio, 392 U.S. 1 (1968)) (footnote omitted).
60. 79 N.Y.2d 181, 590 N.E.2d 204, 581 N.Y.S.2d 619 (1992).
61. *Id.* at 194, 590 N.E.2d at 211, 581 N.Y.S.2d at 626.
62. 39 N.Y.2d 122, 347 N.E.2d 575, 383 N.Y.S.2d 215 (1976).

of consent was whether the consent was "voluntarily given or [was] only a yielding to overbearing official pressure."[63] Accordingly, the *Banks* court determined that "[t]he consent to search was obtained during or immediately after [an] extended detention and without any intervening circumstances."[64] After finding that Trooper Cuprill admitted to a delay in "issuing the traffic tickets and returning the licenses and rental agreement . . . for the specific purpose of effecting a search of the automobile,"[65] the court ordered the suppression of the evidence.[66]

Under both the New York State and United States Constitutions, a person has standing to object to a search or seizure if he can establish a legitimate expectation of privacy in the premises searched or the item seized.[67] Additionally, under both constitutions, the seizure of a person is proper if the stop is justified and if it is related in scope to this justification.[68] Finally, under both constitutions, consent to search cannot be obtained pursuant to an unlawful detention.[69]

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63. *Id.* at 128, 347 N.E.2d at 580, 383 N.Y.S.2d at 219. In *Gonzalez*, the court also stated that "[c]onsent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle." *Id.*

64. People v. Banks, 85 N.Y.2d 558, 562, 650 N.E.2d 833, 835, 626 N.Y.S.2d 986, 988, *cert. denied*, 116 S. Ct. 187 (1995).

65. *Id.* at 562-63, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

66. *Id.* at 563, 650 N.E.2d at 835, 626 N.Y.S.2d at 988.

67. *See* People v. Wesley, 73 N.Y.2d 351, 357, 538 N.E.2d 76, 79, 540 N.Y.S.2d 757, 760 (1989).

68. *See* People v. Milaski, 62 N.Y.2d 147, 156, 464 N.E.2d 472, 476, 476 N.Y.S.2d 104, 109 (1984).

69. *Id.*