Touro Law Review

Volume 12
Number 3 *New York State constitutional Decisions: 1995 Compilation*

Article 55

1996

# Searches and Seizures

People v. Spencer[70]
(decided January 17, 1995)

This action was brought by the defendant in order to appeal the denial of his motion to suppress physical evidence seized by the New York City Police.[71] The defendant claimed that his right to be free from unreasonable seizures was violated under both the United States[72] and New York State[73] Constitutions when police officers stopped his vehicle in order to request information from him, resulting in the discovery of marihuana and a hand gun.[74] The defendant claimed that the appellate division erred in holding "that the police could validly stop his *vehicle* in order to request information of him."[75] The New York Court of Appeals held that the stop of the defendant's vehicle, so that the officers could ask defendant if he knew where a person for whom they were searching could be found, was an unwarranted intrusion.[76] Accordingly, the court reversed the order of the appellate division, granted the defendant's motion to suppress the physical evidence, and directed the dismissal of the indictment.[77]

On May 17, 1989, at approximately 11:00 p.m., Police Officers Alonge and Conceicao, who were on routine patrol in a marked car, received a radio report to investigate a complaint by a woman who said she had been assaulted with a gun on the previous day by her boyfriend.[78] After picking up the

70. 84 N.Y.2d 749, 646 N.E.2d 785, 622 N.Y.S.2d 483, *cert. denied*, 116 S. Ct. 271 (1995).

71. *Id.* at 752, 646 N.E.2d at 787, 622 N.Y.S.2d at 485.

72. 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 . . . but upon probable cause . . . ." *Id.*

73. N.Y. CONST. art. I, § 12. Article I, section 12 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 . . . but upon probable cause . . . ." *Id.*

74. *Spencer*, 84 N.Y.2d at 751, 646 N.E.2d at 787, 622 N.Y.S.2d at 485.

75. *Id.* at 752, 646 N.E.2d at 787, 622 N.Y.S.2d at 485 (emphasis added).

76. *Id.* at 759, 646 N.E.2d at 791, 622 N.Y.S.2d at 489.

77. *Id.*

78. *Id.* at 751, 646 N.E.2d at 786, 622 N.Y.S.2d at 485.

complainant, and with her in the car, the officers drove around the neighborhood searching for the suspect.[79] After driving around for "[n]o more than four or five minutes,"[80] the complainant observed the defendant seated in the driver's seat of a double-parked car, and told the officer that he was a friend of her boyfriend's and that her boyfriend may be nearby.[81] After the defendant's car began to drive away, the officers, with their turret lights on and car horn sounding, ordered him to pull over.[82] As the officers approached the vehicle and shined their lighted flashlights into the interior of the car, they observed a "clear plastic bag containing green vegetable matter which they believed to be marihuana," on the floor of the car.[83] The officers then asked the defendant to exit the vehicle.[84] After the defendant had exited the car, Officer Alonge observed the "butt" of a revolver on the floor under the driver's seat.[85] After determining that the gun was loaded, they placed the defendant under arrest. He was subsequently charged with criminal possession of marihuana in the fourth degree and criminal possession of a weapon in the third degree.[86]

The defendant made a motion to suppress the physical evidence seized by the officers on the ground that the seizure violated his right to be free from unreasonable seizure.[87] The suppression court denied the motion after determining that the police officers had "a right to request information of defendant and could stop his car in order to effectuate that right."[88] The Appellate

79. *Id.*

80. *Id.*

81. *Id.* at 751, 646 N.E.2d at 786-87, 622 N.Y.S.2d at 484-85.

82. *Id.*

83. *Id.*

84. *Id.* As the officers approached the vehicle, they observed a female in the passenger seat who was also asked to exit the car. *Id.*

85. *Id.*

86. *Id.* The female passenger was released after the defendant admitted that she had nothing to do with the alleged marijuana. *Id.*

87. *Id.* at 752, 646 N.E.2d at 787, 622 N.Y.S.2d at 485.

88. *Id.* The suppression court stated that "at the time the police resolved to exercise their right to request information, defendant's vehicle was in motion.

Division, Second Department affirmed,[89] relying on *People v. John BB*,[90] where the court of appeals held that "an automobile stop made pursuant to a uniform, nonarbitrary, roving roadblock was constitutionally permissible."[91]

The court of appeals began its analysis by making a determination that the stop of the defendant was in fact a seizure. The threshold inquiry in determining the constitutional scope for a routine traffic check is whether such a stop is a seizure within the meaning of constitutional limitations.[92] The United States Supreme Court has determined that whenever an officer detains an individual and restrains his freedom to walk away, he has seized that person.[93] Accordingly, the New York Court of Appeals has held that a "stop of an automobile as for a 'routine traffic check' is a seizure within constitutional limitations."[94] The court in *Spencer* stated that:

> [a]lthough the right to stop a vehicle is generally analogous to the right to stop a pedestrian, police/motorist encounters must be

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Under these circumstances, common sense demands that they be permitted to stop it." *Id.*

89. 193 A.D.2d 90, 602 N.Y.S.2d 412 (2d Dep't 1993). The appellate division stated that the police had acted reasonably when they stopped the defendant's vehicle so they could request information as to the location of the suspect. *Id.* at 95, 602 N.Y.S.2d at 415-16.

90. 56 N.Y.2d 482, 438 N.E.2d 864, 453 N.Y.S.2d 158, *cert. denied*, 459 U.S. 1010 (1982).

91. *Spencer*, 84 N.Y.2d at 752, 646 N.E.2d at 787, 622 N.Y.S.2d at 485 (citing People v. John BB, 56 N.Y.2d 482, 488, 438 N.E.2d 864, 867, 453 N.Y.S.2d 158, 162, *cert. denied*, 459 U.S. 1010 (1982)).

92. People v. Ingle, 36 N.Y.2d 413, 418, 330 N.E.2d 39, 42, 369 N.Y.S.2d 67, 72 (1975).

93. Terry v. Ohio, 392 U.S. 1, 17 (1968). Although the encounter in *Terry* took place between a policeman and pedestrians on a public sidewalk, an analogous interpretation has been made between a motorist who is "detained" by turret lights and a police car horn and "restrained" by a police officer for a specific purpose. *See, e.g.*, People v. May, 81 N.Y.2d 725, 727, 609 N.E.2d 113, 114, 593 N.Y.S.2d 760, 761 (1992) ("[W]hen the police, using red turret lights, a spotlight and a loudspeaker, ordered defendant to pull the car over, defendant was effectively 'seized.'"); *Ingle*, 36 N.Y.2d at 418, 330 N.E.2d at 43, 369 N.Y.S.2d at 72.

94. *Ingle*, 36 N.Y.2d at 418, 330 N.E.2d at 43, 369 N.Y.S.2d at 72-73.

> distinguished from police/pedestrian encounters when the police are operating on less than reasonable suspicion . . . because "the obvious impact of stopping the progress of an automobile is more intrusive than the minimal intrusion involved in stopping a pedestrian . . . ."[95]

Additionally, the court noted that it has been established in New York that stops of automobiles by the police are only legal if done pursuant to a routine, non-pretextual traffic check to enforce a traffic regulation or where the officers have at least a reasonable suspicion that an occupant of the vehicle has committed or is in the process of committing a crime.[96] In *People v. May*,[97] police officers observed a couple sitting in a parked vehicle on a street known for criminal activity.[98] As the police approached, with the patrol car's red turret lights and a spotlight on, the car began to drive away, and the driver was subsequently ordered to pull over.[99] The court held that the basis for the order to stop, namely the common-law right of inquiry, failed to satisfy the established constitutional standards unless "the officers had a reasonable suspicion of criminal activity."[100]

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95. *Spencer*, 84 N.Y.2d at 752, 646 N.E.2d at 787, 622 N.Y.S.2d at 485 (quoting *John BB*, 56 N.Y.2d at 487, 438 N.E.2d at 867, 453 N.Y.S.2d at 161). The court also noted that the common-law right to inquiry does not include the rights to unlawfully seize, much less the right to request information. *Id. See* People v. Sobotker, 43 N.Y.2d 559, 563, 373 N.E.2d 1218, 1220, 402 N.Y.S.2d 993, 995-96 (1978); People v. Cantor, 36 N.Y.2d 106, 114, 324 N.E.2d 872, 878, 365 N.Y.S.2d 509, 517 (1975).

96. *Spencer*, 84 N.Y.2d at 752, 646 N.E.2d at 787-88, 622 N.Y.S.2d at 485-86. *See* People v. Harrison, 57 N.Y.2d 470, 476, 443 N.E.2d 447, 450, 457 N.Y.S.2d 199, 202 (1982) (holding that if the police are to forcibly detain, 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).

97. 81 N.Y.2d 725, 609 N.E.2d 113, 593 N.Y.S.2d 760 (1992).

98. *Id.* at 727, 609 N.E.2d at 115, 593 N.Y.S.2d at 762.

99. *Id.*

100. *Id.* The *Spencer* court noted that nothing would have prevented the police in *May* from questioning the occupants of the vehicle pursuant to the common-law right of inquiry while the car was still parked, based on a "founded suspicion that criminal activity is afoot,' which permits 'interference with a citizen to the extent necessary to gain explanatory information, but short

The court made it clear that the right to stop a moving vehicle is subject to a stricter standard than the right to approach occupants of a parked vehicle.[101] In *People v. Harrison*,[102] the court held that, although the police do not need a reasonable suspicion to approach a citizen or parked car and request information, a reasonable suspicion is needed if an officer is to forcibly detain or constructively stop a person by ordering the driver or occupant to remain in the car.[103] Thus, the *Spencer* court determined that, as was the case in *May*, once the defendant indicated an unwillingness to speak to the police officers by driving away, they should not have stopped him without a reasonable suspicion of criminal activity.[104] As the *May* court stated:

> The police may . . . detain civilians in order to question them, however, without a reasonable suspicion of criminal activity and once defendant indicated, by pulling away from the curb, that he did not wish to speak with the officers, they should not have forced him to stop without legal grounds to do so. Any other rule would permit police seizures solely if circumstances existed presenting a potential for danger.[105]

Based on this analysis, the court concluded that the stop of Spencer was a seizure, and next had to determine whether the stop was reasonable.[106]

In *People v. Scott*,[107] the New York Court of Appeals stated that whether a seizure is "reasonable" within the meaning of the Fourth Amendment is determined "by balancing its intrusion on

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of a forcible seizure." *Spencer*, 84 N.Y.2d at 753, 646 N.E.2d at 788, 622 N.Y.S.2d at 486 (quoting People v. De Bour, 40 N.Y.2d 210, 223, 374 N.E.2d 562, 572, 386 N.Y.S.2d 375, 385 (1976)).

101. *Spencer*, 84 N.Y.2d at 753, 646 N.E.2d at 788, 622 N.Y.S.2d at 486.

102. 57 N.Y.2d 470, 443 N.E.2d 447, 457 N.Y.S.2d 199 (1982).

103. *Id.* at 476, 443 N.E.2d at 450, 457 N.Y.S.2d at 202.

104. *Spencer*, 84 N.Y.2d at 753, 646 N.E.2d at 788, 622 N.Y.S.2d at 486.

105. People v. May, 81 N.Y.2d 725, 728, 609 N.E.2d 113, 115, 593 N.Y.S.2d 760, 762 (1992).

106. *Spencer*, 84 N.Y.2d at 753-54, 646 N.E.2d at 788, 622 N.Y.S.2d at 486.

107. 63 N.Y.2d 518, 473 N.E.2d 1, 483 N.Y.S.2d 649 (1984).

the Fourth Amendment interests of the individual involved against its promotion of legitimate governmental interests."[108] The focus of the balancing test is on the relation between the governmental interest involved and "the degree of intrusion of the procedure on the individual subjected to it, measured in terms of both its subjective effect and the degree of discretion vested in the officials charged with carrying it out."[109] Applying this test, the *Spencer* court concluded that the governmental interest here was outweighed by the nature and degree of the police intrusion.[110] In *United States v. Hensley*,[111] the United States Supreme Court discussed the nature of this governmental interest when past criminal activity is what is being investigated in the context of the Fourth Amendment balancing test. The Court stated:

> The factors in the balance may be somewhat different when a stop to investigate past criminal activity is involved rather than a stop to investigate ongoing criminal conduct. This is because the governmental interests and the nature of the intrusions involved in the two situations may differ. As we noted in *Terry*, one general interest present in the context of ongoing or imminent criminal activity is "that of effective crime prevention and detection." . . . Similarly, the exigent circumstances which require a police officer to step in before a crime is committed or completed are not necessarily as pressing long afterwards. Public safety may be less threatened by a suspect in a past crime who now appears to be going about his lawful business than it is by a suspect who is currently in the process of violating the law.[112]

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108. *Id.* at 525, 473 N.E.2d at 3, 483 N.Y.S.2d at 651.

109. *Id.* at 525, 473 N.E.2d at 4, 483 N.Y.S.2d at 652.

110. *Spencer*, 84 N.Y.2d at 754, 646 N.E.2d at 788, 622 N.Y.S.2d at 486. The court found that, although the interest in investigation and detection of past criminal activity was significant, it did not "implicate the same important social objectives that are at issue when police are investigating recent or ongoing suspected criminal activity." *Id. See* United States v. Hensley, 469 U.S. 221, 228 (1985) ("A stop to investigate an already completed crime does not necessarily promote the interest of crime prevention as directly as a stop to investigate suspected ongoing criminal activity.").

111. *Hensley*, 469 U.S. at 221.

112. *Id.* at 228 (citations omitted).

In *United States v. Ward*,[113] the Ninth Circuit held that the stop of the defendant by the FBI constituted a seizure and that such a stop of the defendant's vehicle to interview him regarding a federal fugitive was an unreasonable intrusion.[114] Accordingly, materials discovered as a result of the stop were inadmissible.[115] There were several critical aspects to the court's analysis. First was the fact that there was not crime "afoot."[116] Second was the fact that there was not an emergency which required immediate action on behalf of the agents.[117] Last, and most important to the court, was the fact that the stop was not based on a "founded suspicion that the detainee was involved or about to be involved in criminal activity."[118]

Similarly, the *Spencer* court concluded that the stop of the defendant "clearly did not warrant a 'preventative governmental interest in the stop,'" and that the police activity was unreasonable.[119] The New York Court of Appeals found that there was absolutely no evidence in the record indicating that the complainant was in any future danger, there was not any indication the she had previously been assaulted by the suspect, nor was there evidence to support the inference that the suspect was dangerous.[120] According to the court of appeals, the only

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113. 488 F.2d 162 (9th Cir. 1973).

114. *Id.* at 168.

115. *Id.* at 170.

116. *Id.* at 169. According to the court, the FBI agents stopped the defendant pursuant to a criminal investigation that had begun several months earlier. *Id.*

117. *Id.*

118. *Id.*

119. People v. Spencer, 84 N.Y.2d 749, 755, 646 N.E.2d 785, 789, 622 N.Y.S.2d 483, 487, *cert. denied*, 116 S. Ct. 271 (1995). The dissent argued that there was greater compelling governmental interest than just the detection of past criminality. *Id.* at 762, 646 N.E.2d at 793, 622 N.Y.S.2d at 491 (Levine, J., dissenting). Judge Levine felt the facts of the case, "notably the assailant's particularized personal hostility toward the victim and his use and continuing possession of a handgun, readily support a *preventative* governmental interest in the stop, in addition to the interest in detecting a past crime." *Id.* (Levine, J., dissenting).

120. *Id.* at 755, 646 N.E.2d at 789, 622 N.Y.S.2d at 487. Furthermore, the court noted that the circumstances of the case supported this conclusion. *Id.*

reason that the officers stopped defendant was the premise that he was a possible or even probable source of information regarding the suspect's whereabouts.[121] The court of appeals found that the intrusiveness of pulling over the defendant's freely moving vehicle could not be justified "[w]hen the governmental interest in finding and apprehending the suspect in this case is considered in relation to the effectiveness of the procedures chosen to promote it."[122]

The New York Court of Appeals next stated that the seizure was also unreasonable when measured in terms of the amount of discretion vested in the officers.[123] "It must be kept in mind that this defendant was not the subject of individualized suspicion. In the absence thereof, other safeguards are necessary to ensure that his reasonable expectation of privacy is not subject solely to the discretion of the police."[124] In *People v. John BB*,[125] the New York Court of Appeals held that the police were not prohibited

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There was a 43-hour time lapse between the time of the alleged assault and the stop of the defendant, and the officers had not even gone to the suspect's home to search for him before stopping the defendant. *Id.* However, the dissent once again disagreed. Judge Levine stated that "a degree of urgency was present in that the police justifiably believed that defendant would give them information on the assailant's immediate whereabouts." *Id.* at 762, 646 N.E.2d at 793, 622 N.Y.S.2d at 491 (Levine, J., dissenting).

121. *Id.*

122. *Id.* at 757, 646 N.E.2d at 790, 622 N.Y.S.2d at 488. The court also stated that less intrusive alternatives could have been used in this situation. *Id.* The court was also careful to note that the governmental interest involved in this case must be considered in its specific context, as this case involved the "investigation of past criminal activity; the stop of a third person not suspected of criminal activity; the absence of exigent circumstances justifying immediate police action; the availability of less intrusive alternatives; and the candid testimony of the officers, who considered defendant no more than a possible source of information." *Id.* at 757-58, 646 N.E.2d at 790, 622 N.Y.S.2d at 488.

123. *Id. See* People v. Scott, 63 N.Y.2d 518, 525, 473 N.E.2d 1, 4, 483 N.Y.S.2d 649, 652 (1984).

124. *Spencer*, 84 N.Y.2d at 758, 646 N.E.2d at 790-91, 622 N.Y.S.2d at 488-89. The court stated that the stop of the defendant was "standardless and unconstrained." *Id.* at 758, 646 N.E.2d at 791, 622 N.Y.S.2d at 489.

125. 56 N.Y.2d 482, 438 N.E.2d 864, 453 N.Y.S.2d 158, *cert. denied*, 459 U.S. 1010 (1982).

from using a roving roadblock which was conducted in a "nonarbitrary, nondiscriminatory and uniform procedure for the purpose of ascertaining the identity of the occupants and obtaining information concerning criminal activity in [an] area" in which there had been a large number of burglaries.[126] The *Spencer* court distinguished *John BB* on two grounds. First, the degree of the intrusion in *John BB* was far less than in the present case in that all motorists were stopped in an "impersonal, random manner and no individual was singled out."[127] Second, the court, in *John BB*, found that the stop and search of the defendant was not unreasonable because the element of arbitrariness had been eliminated.[128]

Finally, the *Spencer* court determined that the scale of justice was tipped in favor of the suppression of the evidence seized.[129] "The exclusionary rule has as an objective the social benefit of deterring unlawful police conduct [which] . . . necessarily entails balancing the cost of the loss of probative evidence against the gain in deterring lawless police conduct."[130] Based on the circumstances surrounding the stop of the defendant, the court determined that "when the foreseeable deterrent effect against unlawful police conduct is fairly balanced against the adverse impact of suppression upon the truth-finding process, the scale tips decidedly in favor of suppression."[131]

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126. *Spencer*, 84 N.Y.2d at 758, 646 N.E.2d at 791, 622 N.Y.S.2d at 489 (citing *John BB*, 56 N.Y.2d at 488, 438 N.E.2d at 867, 453 N.Y.S.2d at 161).

127. *Spencer*, 84 N.Y.2d at 758, 646 N.E.2d at 791, 622 N.Y.S.2d at 489.

128. *John BB*, 56 N.Y.2d at 488, 438 N.E.2d at 867, 453 N.Y.S.2d at 161. The court said that the "element of arbitrariness has been identified time and again as a critical factor in determining the reasonableness of official investigative activity of an intrusive nature." *Id. See, e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976); People v. De Bour, 40 N.Y.2d 210, 217, 352 N.E.2d 562, 568, 386 N.Y.S.2d 375, 381 (1976); People v. Ingle, 36 N.Y.2d 413, 420, 330 N.E.2d 39, 44, 369 N.Y.S.2d 67, 74 (1975).

129. *Spencer*, 84 N.Y.2d at 759, 646 N.E.2d at 791, 622 N.Y.S.2d at 489.

130. People v. Wesley, 73 N.Y.2d 351, 354-55, 538 N.E.2d 76, 78, 540 N.Y.S.2d 757, 759 (1989).

131. *Spencer*, 84 N.Y.2d at 759, 646 N.E.2d at 791, 622 N.Y.S.2d at 489. The court further noted that "[i]f the instant stop were permissible and motorists could in fact be pulled over at an individual police officer's

Under both the New York State and United States Constitutions, an individual is considered "seized" when he or she has been detained and his or her freedom to walk away has been restrained.[132] Additionally, both constitutions require that such a seizure must be accompanied by a reasonable suspicion of criminality.[133] Absent this reasonable suspicion, both constitutions require the suppression of any evidence obtained during the seizure.[134]

## People v. Yancy[135]
(decided July 14, 1995)

Appellants, Derek Yancy and Joseph Chapman, challenged the denial of motions to suppress physical evidence seized by police officers during warrantless searches of each appellant's car.[136] The ground for appeal was based on a violation of the New York State Constitutional[137] and the Fourth Amendment[138] protections from unreasonable searches and seizures.[139] The New York Court of Appeals, in a consolidated opinion, denied their motions and held that in both instances the police officers had probable

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discretion based upon the mere right to request information, a Pandora's box of pretextual police stops would be opened." *Id.*

132. *See* Terry v. Ohio, 392 U.S. 1, 17 (1968); People v. Ingle, 36 N.Y.2d 413, 418, 330 N.E.2d 39, 43, 369 N.Y.S.2d 67, 72 (1975).

133. *See* People v. May, 81 N.Y.2d 725, 728, 609 N.E.2d 113, 115, 593 N.Y.S.2d 760, 762 (1992).

134. *See Wesley*, 73 N.Y.2d at 354-55, 538 N.E.2d at 78, 540 N.Y.S.2d at 759.

135. 86 N.Y.2d 239, 654 N.E.2d 1233, 630 N.Y.S.2d 985 (1995).

136. *Id.* at 242, 654 N.E.2d at 1234, 630 N.Y.S.2d at 986.

137. N.Y. CONST. art. I, § 12. This section provides in relevant part: "The right of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ." *Id.*

138. U.S. CONST. amend. IV. The Fourth Amendment provides in relevant part: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ." *Id.*

139. *Yancy*, 86 N.Y.2d at 243, 654 N.E.2d at 1234, 630 N.Y.S.2d at 986.