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Searches and Seizures

citizenry.[319] Moreover, the court indicated that the rule as it is today is "worse than ineffective"[320] because it is providing protection to the guilty.[321] The court also indicated that the current rule is not acting as a deterrent to illegal police action because the guilty are going unpunished and the victims are being left without remedy.[322]

Based on these conclusions the court urged the New York State Court of Appeals and the New York State Legislature to eliminate the absolute suppression rule as it stands today.[323] The court stated that a practical remedy should be developed for those individuals whose Fourth Amendment rights have been violated, providing they are "also found not culpable."[324] Finally, the *Owens* court pointed out that a remedy such as this would lead to a more balanced approach to providing protections of individual rights and the seizing of illegal contraband.[325]

QUEENS COUNTY

People v. Woodson[326]
(decided July 7, 1995)

The defendant argued that a urine sample, blood sample, and medical records obtained while the defendant was unconscious in a hospital, through a grand jury subpoena issued less than

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319. *Id. See* Arizona v. Evans, 866 P.2d 869, 871 (Ariz.), *cert. granted*, 114 S. Ct. 2131 (1994). *Evans* was one of those extraordinary cases which put the exclusionary rule in a bad light. In *Evans* the Court suppressed drugs seized by the police in the "execution of an arrest warrant" because the warrant had been quashed a few days earlier, but a clerical error caused it to remain in the police computer. *Id.* Therefore, despite the fact that the police acted in good faith, the evidence was suppressed. *Id.*

320. *Owens,* 164 Misc. 2d at 22, 623 N.Y.S.2d at 723.

321. *Id.*

322. *Id.*

323. *Id.* at 22-23, 623 N.Y.S.2d at 724.

324. *Id.*

325. *Id.*

326. 165 Misc. 2d 784, 630 N.Y.S.2d 670 (Sup. Ct. Queens County 1995).

twenty-four hours after the defendant's arrest, constituted an illegal seizure, in violation of his state[327] and federal[328] constitutional rights to be free from unreasonable seizures.[329] In defense of the subpoena, the prosecution argued that no legal mandate had been violated.[330] However, the court held that the samples and records were illegally seized in violation of the Fourth Amendment of the Federal Constitution and, consequently, suppressed the evidence, along with toxicological examinations performed on the samples.[331]

On May 8, 1993, police responded to a call for help from a specific apartment inside the Queensbridge Housing Development.[332] Upon arrival, the police found a gruesome scene, with one adult and one child dead from stab wounds, and another adult and child seriously injured from stab wounds.[333] The injured child later died from her injuries.[334] The police proceeded to follow a blood trail and found the defendant on the roof of the building.[335] When the defendant saw the police, he jumped into a nearby courtyard and was seriously injured.[336] The defendant was taken to a hospital and on the following day, he was formally arrested while lying comatose in a hospital bed.[337]

On May 10, the District Attorney's Office issued a subpoena requiring the hospital to appear before a grand jury, along with

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327. N.Y. CONST. art. I, § 12. Article I, section 12 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.*

328. 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.*

329. *Woodson*, 165 Misc. 2d at 285-86, 630 N.Y.S.2d at 671.

330. *Id.* at 785, 630 N.Y.S.2d at 671.

331. *Id.* at 790, 630 N.Y.S.2d at 674.

332. *Id.* at 785, 630 N.Y.S.2d at 671.

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

its record's pertaining to the defendant.[338] On May 13, the hospital, in response to the subpoena, turned over its records concerning the defendant.[339]

The *Woodson* court began its discussion by taking note that the defendant has a constitutionally protected interest in the hospital records and the blood and urine samples.[340] According to the court, it is well settled that an unconscious defendant retains his Fourth Amendment protection in blood and urine samples.[341]

Next, the court discussed the varying types of authority under which the District Attorney may obtain items of evidence. The court described three categories of discovery.[342] The first, investigatory discovery, occurs when the District Attorney believes that a specific individual possesses evidence necessary to an ongoing criminal investigation.[343] Under New York Criminal Procedure Law section 690.05,[344] the People may have a search warrant issued in order to secure this type of evidence. The second type of authority by which the District Attorney may obtain items of evidence is discovery at the grand jury level.[345] This type of discovery includes the power to compel the attendance of witnesses under New York Criminal Procedure Law section 610.20,[346] and New York Criminal Procedure Law

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338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.* (citing People v. Natal, 75 N.Y.2d 379, 383, 553 N.E.2d 239, 241, 553 N.Y.S.2d 650, 652 (1990)). The *Natal* court held that a defendant had a protected privacy interest where a "subjective expectation of privacy that society is willing to recognize as reasonable" exists. *Natal*, 75 N.Y.2d at 383, 553 N.E.2d at 241, 553 N.Y.S.2d at 652.

342. *Woodson*, 165 Misc. 2d at 786, 630 N.Y.S.2d at 672-73.

343. *Id.* at 786, 630 N.Y.S.2d at 672.

344. N.Y. CRIM. PROC. LAW § 690.05 (McKinney 1995). Section 690.05 provides in pertinent part: "A local criminal court may, upon application of a . . . district attorney . . . issue a search warrant." *Id.*

345. *Woodson*, 165 Misc. 2d at 787, 630 N.Y.S.2d at 672.

346. N.Y. CRIM. PROC. LAW § 610.20(2) (McKinney 1995). Section 610.20(2) provides in pertinent part:

> A district attorney . . . as an officer of a criminal court in which he is conducting the prosecution of a criminal action or proceeding, may issue a subpoena of such court, subscribed by himself, for the attendance in

section 190.50.[347] The final type of discovery, statutory trial discovery,[348] provides the People with the right to examine, prior to trial, any tests, written reports, or photographs that the defendant intends to introduce at trial under New York Criminal Procedure Law section 240.30.[349] Through statutory trial discovery, the District Attorney may obtain items by court order from a defendant under New York Criminal Procedure Law section 240.40.[350] The District Attorney's Office, in the present case, argued that because no accusatory instrument had been filed, it could not obtain a court order and therefore was compelled to obtain the items through a grand jury subpoena.[351]

The court held that the issuance of a grand jury subpoena was invalid under the circumstances because no criminal investigation had been instigated against the defendant, due either to the comatose state of the defendant or the speed of the

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such court or a grand jury thereof of any witness whom the people are entitled to call in such action or proceeding.

Id.

347. N.Y. CRIM. PROC. LAW § 190.50(2) (McKinney 1993). Section 190.50(2) provides in pertinent part: "The people may call as a witness in a grand jury proceeding any person believed by the district attorney to possess relevant information or knowledge." *Id.*

348. *Woodson*, 165 Misc. 2d at 787-88, 630 N.Y.S.2d at 672-73.

349. N.Y. CRIM. PROC. LAW § 240.30(1) (McKinney 1993). Section 240.30(1) provides in pertinent part:

> [U]pon a demand to produce by the prosecutor, a defendant . . . shall disclose and make available for inspection, photographing, copying or testing, subject to constitutional limitations . . . (a) any written report or document . . . concerning a physical or mental examination, or scientific test, experiment, or comparisons . . . (b) any photograph, drawing, tape or other electronic recording which the defendant intends to introduce at trial . . . .

Id.

350. N.Y. CRIM. PROC. LAW § 240.40(2) (McKinney 1993). Section 240.40(2) provides in pertinent part: "Upon motion of the prosecutor, and subject to constitutional limitation, the court in which an indictment, superior court information, prosecutor's information . . . : (a) must order discovery as to any property not disclosed upon a demand pursuant to section 240.30 . . . and (b) may order the defendant to provide non-testimonial evidence." *Id.*

351. *Woodson*, 165 Misc. 2d at 788, 630 N.Y.S.2d at 673.

investigation.[352] The court noted specifically that no grand jury proceeding had been started, making it impossible for the hospital to appear pursuant to the subpoena.[353] Further, the court analogized that the subpoena which was issued was similar to an office subpoena, requiring an appearance at the District Attorney's office in order to further an investigation; however, the District Attorney has no authority to issue this subpoena.[354] The court stated that, "[t]he People have no right to issue a subpoena for the sole purpose of securing evidence in a pending case."[355]

The court quoted extensively from the decision of the New York Court of Appeals in *People v. Natal*,[356] where New York's highest court condemned a similar practice, but refused to reverse the defendant's conviction.[357] In *Natal*, the court stated:

> Subpoenas, of course, are process of the courts, not the parties . . . . While by statute it is the District Attorney who issues a subpoena *duces tecum* (CPL 610.25(1)), the subpoena is nevertheless a mandate *of* the court issued *for* the court . . . . It has long been recognized that District Attorneys may not issue subpoenas except through the process of the court, and they exercise the power to compel witnesses to produce physical evidence only before a Grand Jury or a court where a proceeding is pending . . . . CPL 610.25(1) makes clear that where the District Attorney seeks trial evidence the subpoena should be made returnable to the court, which has 'the right to possession of the subpoenaed evidence.' It is for the court, not the

352. *Id.* at 789, 630 N.Y.S.2d at 673.

353. *Id.*

354. *Id.*

355. *Id*

356. 75 N.Y.2d 379, 553 N.E.2d 239, 553 N.Y.S.2d 650 (1990). In *Natal*, the defendant appealed a conviction for burglary and grand larceny on the grounds that the District Attorney had abused the subpoena process by requesting, and receiving, the defendant's personal items and clothes taken at the time of arrest, under a subpoena not signed by a judge. *Id.* at 382, 553 N.E.2d at 240, 553 N.Y.S.2d at 651.

357. *Id.* at 384-86, 553 N.E.2d at 241-42, 553 N.Y.S.2d at 652-53.

> prosecutor, to determine where subpoenaed materials should be deposited, as well as any disputes regarding production . . . . By circumventing the court, the District Attorney avoided all the protections provided against abuse of the subpoena process, and succeeded in transforming a court process into a function of his own office . . . . Such conduct is all the more disturbing in the light of apparent prior admonitions by Trial Judges to the District Attorney concerning similar misuse in other cases.[358]

The court in *Woodson* relied upon this exact language in reaching its conclusion to exclude the evidence.[359]

The court also relied on the fact that there were no exigent circumstances, such as possible destruction of evidence or tampering with evidence, because the items at issue, hospital records, would have been available in the future.[360] Furthermore, there was enough time for the District Attorney to secure a proper court order.[361] The court also noted that if the intention was to provide these tests and records to a grand jury, a subpoena could have been issued because "the Supreme Court has the authority to issue an order in furtherance of a grand jury investigation even though no arrest or indictment has yet occurred."[362]

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358. *Woodson*, 165 Misc. 2d at 789-90, 630 N.Y.S.2d at 674 (quoting *Natal*, 75 N.Y.2d at 384-85, 553 N.E.2d at 241-42, 553 N.Y.S.2d at 652-53 (citations omitted)); *see* N.Y. CRIM. PROC. LAW § 610.25(1) (McKinney 1995). Section 610.25(1) provides: "Where a subpoena duces tecum is issued on reasonable notice to the person subpoenaed, the court or grand jury shall have the right to possession of the subpoenaed evidence. Such evidence may be retained by the court, grand jury or District Attorney on behalf of the grand jury." *Id.*

359. *Woodson*, 165 Misc. 2d at 789, 630 N.Y.S.2d at 674.

360. *Id.*

361. *Id. See* People v. Hayes, 154 Misc. 2d 429, 433, 584 N.Y.S.2d 1001, 1004 (Sup. Ct. New York County 1992) (holding that defendant's clothing and results of scientific analysis were unlawfully seized when no exigent circumstances existed, and when clothing was entrusted to a hospital and a detective removed the clothes without a warrant).

362. *Woodson*, 165 Misc. 2d at 790, 630 N.Y.S.2d at 674 (quoting People v. Middleton, 54 N.Y.2d 42, 47, 429 N.E.2d 100, 102, 444 N.Y.S.2d 581,

Based on the foregoing conclusions, the *Woodson* court determined that the District Attorney's use of a grand jury subpoena to gain possession of the defendant's hospital records and blood and urine samples violated the defendant's Fourth Amendment right to be free from illegal seizures.[363]

583 (1981) (finding that the supreme court had the jurisdiction to order a mold of the defendant's teeth in furtherance of a grand jury investigation)).

363. *Woodson*, 165 Misc. 2d at 790, 630 N.Y.S.2d at 674. Although not explicitly stated by the court, because the rights established under the Federal Constitution are the minimum standards permissible, it was therefore unnecessary for the court to base its decision on a New York Constitutional analysis.