

NEW YORK COURT OF APPEALS ROUNDUP

COURT OF APPEALS WEIGHS IN ON REASONABLE SUSPICION

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The Court of Appeals had a relatively quiet January and released four opinions. In one of those decisions, *People v. Messano*, it considered (1) whether the police had reasonable suspicion to detain the defendant and (2) even if the police lacked reasonable suspicion to detain the defendant, whether the People met their burden of showing that drug-related contraband should not be suppressed because the evidence was in plain view.

In a 4-3 split decision, Judge Jenny Rivera wrote for the majority holding that the search was unconstitutional because the People failed to establish that the police had reasonable suspicion to detain the defendant and failed to show that the police observed the challenged evidence in plain view.

In his trial for second-degree criminal possession of a weapon, the defendant moved to suppress the handgun found in the backseat of his car on the basis that the search and seizure of the evidence was unconstitutional. During the suppression hearing, a detective testified that he observed a car driving erratically and then pulling up next to the defendant's car. The drivers engaged in a loud conversation and then pulled into a parking lot for businesses that were closed.

From approximately 50 to 75 yards away, the detective observed the defendant leave his car and stick his head into the other car's front passenger-side window several times while talking to the other driver. The defendant was also looking around and texting on his phone.

The detective testified that the parties appeared to be engaged in a drug transaction but he conceded on cross-examination that he did not actually see any such transaction take place. A third car arrived and that car was driven by someone the detective knew had been arrested for drug possession. The detective called other officers to help him approach the three men.

A deputy who was among the responding officers approached the defendant when the defendant was seated in the driver's seat of his car. The deputy testified that the defendant got out of his car, closed the door and walked toward the deputy as the deputy approached. While acknowledging that the defendant was not threatening, the deputy testified that he frisked the defendant to make sure he had no weapons that could harm the officers. The deputy found nothing on the defendant, but told him to stand at the rear of the car where the deputy's partner could see him. The deputy testified that the defendant was not free to leave at that point.

The deputy then approached the defendant's car, looked through the driver's side window and saw a rolled-up dollar bill and a white substance he believed to be cocaine. He told his partner to arrest the defendant and he commenced searching the vehicle. Upon searching the vehicle and the defendant, the officers found narcotics and a handgun in the car.

Defense counsel argued at the suppression hearing that the police lacked reasonable suspicion to detain the defendant because they did not observe him engaging in any illegal behavior and the plain view doctrine did not justify the search of the defendant's car. The Onondaga County Court denied the suppression request and the defendant pleaded guilty.

The Appellate Division Fourth Department affirmed the denial in a split decision. 213 A.D.3d 1307 (4th Dep't 2023). The majority held that detaining the defendant was not unconstitutional because the deputy had a reasonable suspicion that the defendant participated in a drug transaction based on the detective's prior observations. It further held that, even if the defendant had not been detained, the deputy could have simply walked up to the vehicle and seen the drugs in plain view on the driver's seat.

Two justices dissented, concluding that the police did not have reasonable suspicion based on innocuous actions that were readily susceptible of an innocent interpretation. The dissent rejected the application of the plain view doctrine because the deputy's observation of the drugs was a continuation of the unlawful seizure of the defendant that provided the deputy with an unobstructed view. One of the dissenting justices granted the defendant leave to appeal to the Court of Appeals.

Judge Jenny Rivera's majority opinion, joined by Chief Judge Rowan Wilson and Judges Shirley Troutman and Caitlin Halligan, began its analysis by reiterating that unreasonable searches and seizures are prohibited by the Fourth Amendment of the U.S. Constitution and Article I, Section 12 of the New York Constitution. Brief investigative stops of individuals in public places without a warrant are only allowed when there is a reasonable suspicion that the individual is committing, has committed, or is about to engage in criminal activity based on the totality of the circumstances. Reasonable suspicion may not be based on equivocal or innocuous behavior that is susceptible of an innocent interpretation.

Similarly, police seizure of property without a warrant is per se unreasonable under the Fourth Amendment subject to a few exceptions, including evidence in plain view of law enforcement. This plain view doctrine, however, does not apply where an officer is in position to observe the evidence because the officer violated a constitutional prohibition against unreasonable searches and seizures.

The majority also discussed the legal standards governing suppression motions and noted that if a defendant moves to suppress evidence seized by the police, the People bear the burden of establishing the legality of the police conduct. That burden also includes overcoming the presumption of unreasonableness that attaches to all warrantless seizures of property, including the legitimacy of plain view seizures.

In applying those legal standards to this case, the majority concluded that, as a matter of law, the detective's observations did not provide the police with a reasonable suspicion that the defendant was engaged in criminal activity because the defendant's behavior was equivocal and susceptible of an innocent interpretation when the behavior is viewed in totality.

The majority further found that the detective's observation of the third driver who the detective knew had been arrested for drug-related charges could not support a finding of reasonable suspicion because the detective did not observe any criminal activity between the third person and the defendant and guilt by association will not suffice. Accordingly, the deputy lacked reasonable suspicion of criminal activity and he was not justified in detaining the defendant at the back of his car.

The majority also rejected the People's contention that the seizure was appropriate even if the defendant's detention was not justified because the evidence was in plain sight. The majority explained that the deputy did not testify that he could see the challenged evidence from his vantage point as the defendant approached him or when he searched the defendant. Rather, the deputy testified that he walked toward the driver's window only after the defendant was detained. Therefore, the only reasonable inference is that the deputy could only see the challenged evidence by taking steps closer to the vehicle after the defendant's unconstitutional detention.

Accordingly, the majority found that there was no record evidence to support the application of the plain view exception. The Fourth Department's decision was reversed, the defendant's motion to suppress granted, and the indictment dismissed because the People failed to overcome the presumptive unreasonableness of the warrantless search, including demonstrating the legitimacy of the plain view seizure.

Judge Michael J. Garcia, joined by Judges Anthony Cannataro and Madeline Singas, wrote a dissent arguing that the majority substituted its own view of the facts and drew negative inferences from the record in order to support their reversal of the conviction as a matter of law. According to the dissent, the lower courts' determinations of reasonable suspicion and plain view present mixed questions of law and fact that are only reviewed by the Court of Appeals to determine whether there is sufficient record evidence supporting the lower courts' determinations.

While the dissent's recitation of the facts does not differ significantly from the majority's, the dissent would hold that there is sufficient record evidence supporting the conclusions of the trial court and Appellate Division after viewing the evidence in its totality and after giving every reasonable inference from the record in support of the lower courts' determinations.

This decision makes clear that a majority of the court will set a high bar for establishing reasonable suspicion in future cases and will not assume that certain activity is criminal in nature if there is an innocent alternative explanation.

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