

## NEW YORK COURT OF APPEALS ROUNDUP

### COURT EXAMINES POWERS OF LAW ENFORCEMENT WHEN ACTING OUTSIDE JURISDICTION IN TRAFFIC STOP

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In a recent decision, the Court of Appeals examined the powers of law enforcement officers acting outside the scope of their jurisdiction to stop a vehicle for traffic violations and effectively conduct an “arrest.” The majority in *People v. Page* denied a motion to suppress evidence seized during a traffic stop by a law enforcement official on the grounds that he was making a citizen’s arrest in a decision that focused on the specific language of the governing Criminal Procedure Law provisions. The dissent, on the other hand, placed greater emphasis on the policy rationale behind those provisions in arguing that the seized evidence should be suppressed. This divided decision concerning appropriate limitations on police power and people’s ability to make citizen arrests is of particular interest given the recent efforts to reexamine fundamental aspects of law enforcement and self-policing in our society.

In June 2017, an on-duty federal marine interdiction agent with the U.S. Customs and Border Protection (CBP) was driving an unmarked SUV on Interstate 190 in Erie County. The SUV was equipped with an emergency radio and a limited number of emergency lights in its front grille and windshield, but lacked the full suite of lights and sirens usually found on police vehicles. The agent saw a car occupied by the defendant and two other individuals driving erratically and barely avoiding multiple collisions. The agent followed the car and unsuccessfully attempted to report the incident to the State Police on his emergency radio. He then called 911 on his personal phone and was transferred to the Buffalo Police Department. As his call was being transferred, the agent followed the defendant’s car as it exited the highway and continued to drive erratically through the local streets. The agent testified that he was concerned for public safety and activated the emergency lights on his SUV in order to stop the car. The car pulled over, and the agent reported the license plate and location to the Buffalo police and waited approximately five minutes for a police officer to arrive. A single police officer arrived and the agent approached the vehicle with him for what the majority and the Fourth Department described as “safety reasons.” The agent saw the police officer speaking with the occupants, but the agent did not speak to any of them and left the scene when additional Buffalo police officers arrived and told him that he was no longer needed.

After the agent left, the Buffalo police officers searched the car and found a gun. All three of the occupants were arrested, and the defendant was charged with criminal possession of a weapon in the second degree. The Supreme Court, Erie County granted a pretrial motion to suppress the gun as the result of an unlawful seizure. The Appellate Division, Fourth Department affirmed in a unanimous decision, and the Court of Appeals granted the people’s application for leave to appeal.

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Both the Supreme Court and the Fourth Department relied on the Court of Appeals' prior decision in *People v. Williams*, 4 NY3d 535 (2005), in suppressing the gun recovered from the stopped vehicle. That case involved two Buffalo Municipal Housing Authority officers who, pursuant to CPL 2.10[17], are expressly included in the ambit of "persons designated as peace officers." As peace officers, their police powers are subject to specific limitations set forth in CPL 140.25, including with respect to the power to make an arrest outside the geographic area of their employment. The officers saw the defendant driving without a seatbelt outside the officers' geographical jurisdiction, stopped the defendant and recovered a bag of crack cocaine from him. The defendant was charged with criminal possession of a controlled substance but successfully moved to dismiss the charges. The Appellate Division affirmed the dismissal. In affirming the Appellate Division, the Court of Appeals rejected the People's argument that, even though the officers were outside their geographic area of employment, their warrantless arrest was the equivalent of a citizen's arrest pursuant to CPL 140.30, which permits any person to effect an arrest under certain circumstances. The Court of Appeals ruled that allowing the officers to effect a citizen's arrest pursuant to CPL 140.30 that they were prohibited from effecting as peace officers would render meaningless the legislature's restrictions on the police powers of peace officers. The Court of Appeals noted that it was not holding that an individual employed as a peace officer could never make a citizen's arrest. Rather, it is only "a peace officer who acts under color of law and with all the accouterments of official authority" who cannot effect a citizen's arrest.

In the *Page* case, the majority opinion written by Judge Paul G. Feinman and joined by Chief Judge DiFiore and Judges Stein, Garcia and Wilson focused on the question of whether the marine interdiction agent was a peace officer. Unlike the Buffalo Municipal Housing Authority officers at issue in *Williams*, federal agents are not included in CPL 2.10's exclusive list of "persons designated as peace officers." CPL 2.15 does, however, provide limited peace officer powers to certain federal law enforcement officers including "United States Customs and Border Protection Officers and United States Customs and Border Protection Border Patrol agents." The majority found that the express language of the statute does not refer broadly to all CBP agents but is limited to CBP "Officers" and "Border Patrol agents" and, accordingly, does not include air and marine agents like the agent in this case. Because the agent is not considered a peace officer or a federal law enforcement agent with peace officer powers pursuant to the CPL, he could not have improperly relied on the citizen's arrest provisions of CPL 140.30 to circumvent the limitations placed on police powers of peace officers. Accordingly, *Williams* does not apply, and the gun seized as a result of the agent's actions in stopping defendant's car is not subject to suppression. The majority emphasized that it was solely deciding the question of whether the courts below properly applied *Williams*. The majority noted that other potential claims, such as those based on state or federal constitutional rights, were not raised by the defendant.

Judge Eugene M. Fahey, joined by Judge Rivera, issued a dissenting opinion arguing that allowing a law enforcement official who is neither a police officer nor peace officer to effectively impersonate one in order to effect an arrest would undermine the rationale of the court's decision in *Williams*. According to the dissent, because the agent was acting under color of law and with the outward characteristics of official authority, he was in fact acting as a peace officer. Expanding the reach of the citizen's arrest provisions of the CPL in this manner raises the prospect of increased vigilantism which, as the dissent notes, is of particular concern given incidents in recent years where what the dissent describes as "neighborhood watch group or homeowners' association members, and similar vigilantes have engaged in aggressive conduct, often with tragic consequences." Accordingly, the dissent views this case as squarely within the holding of *Williams* and would affirm the Appellate Division's and Supreme Court's suppression of the seized evidence.

In reaching opposite conclusions, the majority focused on the specific definition of peace officer to find the marine interdiction agent's actions outside the scope of *Williams* whereas the dissenting judges emphasized the

policy rationale of *Williams* and examined what they viewed as the practical effect of eroding limits on the police powers of peace officers and expanding citizen's arrest powers.

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