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NEW YORK COURT OF APPEALS CASE COMPILATIONS: PEOPLE V. MUNDO

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THE PEOPLE V. MUNDO[1]

(decided Nov. 19, 2002)

I. SYNOPSIS

In a 7-2 decision, the New York Court of Appeals affirmed the appellate division's order upholding the conviction of the defendant, Jose Mundo. The court found that the police had conducted a lawful search of a car that the defendant was in during a traffic stop, which yielded a kilogram of cocaine that was used as evidence in the defendant's prosecution. The court concluded that the officers could have believed there was "'actual and specific' danger to their safety," which justified the search of the car.[2]

II. BACKGROUND

On July 19, 1997, two New York City police officers were on patrol in Manhattan when they observed a vehicle with Florida license plates make a right turn at a red light.[3] The officers attempted to stop the vehicle by activating their lights.[4] After the vehicle pulled over and the officers approached on foot, it pulled away at a slow speed.[5] The officers returned to their patrol car, activated both their lights and sirens, and attempted to pull the vehicle over for a second time.[6] Again, the vehicle pulled over and drove away after the officers exited the patrol car.[7] As the officers pursued the vehicle for a third time, it nearly hit a pedestrian crossing the street.[8] The officers testified that during this period of time, the defendant in the back seat turned and faced them.[9] In addition, he made suspicious motions as if he were hiding something.[10]

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1. 99 N.Y.2d 55 (2002).
2. *Id.* at 59 (quoting People v. Carvey, 89 N.Y.2d 707, 712 (1997)).
3. People v. Mundo, 99 N.Y.2d at 57.
4. *Id.*
5. People v. Mundo, 730 N.Y.S.2d 305, 306 (App. Div. 2001).
6. *Id.*
7. *Id.*
8. *Mundo*, 99 N.Y.2d at 57.
9. *Id.*
10. *Id.*

The officers were ultimately successful in stopping the vehicle, at which time the vehicle's occupants were directed to exit the vehicle and were patted down.[11] One officer entered the vehicle and searched the area in the back seat, where it seemed the defendant had hidden something.[12] Upon pulling down an armrest, the officer observed an access panel to the trunk and the strong odor of a chemical compound used to "'cut' or 'cook' cocaine."[13] The officer then exited the vehicle and opened the trunk where he found almost one kilogram of cocaine.[14]

At trial, the defendant made a motion to suppress the cocaine found in the trunk of the vehicle.[15] The motion was denied and the defendant was convicted of criminal possession of a controlled substance in the first and third degrees.[16] He was sentenced to concurrent terms of 15 years to life and 6 to 18 years.[17]

The defendant appealed his conviction alleging that the officer's search violated his Fourth and Fourteenth Amendment rights under the United States Constitution, as well as his rights under Article 1, § 12 of the New York State Constitution.[18] The appellate division affirmed the trial court's decision, holding that:

> Under the totality of the circumstances of this case, where the car in which defendant was riding took an extraordinary series of evasive actions as it was being pulled over for running a red light, coupled with the defendant's furtive activity in the back seat while eyeing the pursuing police car, the officers had actual and specific reason to believe it to be a substantial likelihood that defendant had secreted a weapon in that area, and were thus justified in performing a limited search of the area after removing and frisking the passengers.[19]

11. 99 N.Y.2d at 57.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Mundo*, 730 N.Y.S.2d at 306.
18. *Mundo*, 99 N.Y.2d at 57.
19. *Mundo*, 730 N.Y.S.2d at 307.

The appellate division did, however, vacate the conviction of the lesser charge.[20] The court found that since the lesser charge "arose from possession of the same cocaine without any further activity" dismissal of the lesser charge was in the interests of justice.[21]

The defendant subsequently appealed the appellate court's decision.[22] The court of appeals addressed the propriety of the search solely on the basis of state law, and dismissed the federal constitutional claims as without merit.[23]

III. Discussion

The court first examined the officers' behavior and found that there was a lawful traffic stop because the officers observed the vehicle making an illegal turn.[24] In addition, the court determined that the officers "were authorized to direct the driver and passengers to exit the detained vehicle."[25] Therefore, at issue remained "whether the officer could lawfully search a limited area of the backseat in light of all the facts of [the] case."[26]

The court began its analysis of this issue by looking to settled law in this area. Article I, § 12 of the New York State Constitution protects people against "unreasonable searches and seizures" of their persons, homes and effects.[27] The relevant language of § 12 of the New York State Constitution mirrors that of the Fourth Amendment to United States Constitution. Despite the identical language of the provisions, the interpretations of state and federal constitutional rights have developed differently. The New York State Court of Appeals addressed this divergence in *People v. Torres*.[28]

In *Torres*, the court held that a "police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually

20. *Mundo*, 730 N.Y.S.2d at 307.
21. *Id.*
22. *Mundo*, 99 N.Y.2d at 57.
23. *Id.* at 59.
24. *Id.* at 58.
25. *Id.*
26. *Id.*
27. N.Y. CONST. art. I, § 12.
28. 74 N.Y.2d 224 (1989).

necessary to protect him from harm."[29] The court maintained that an officer's "entry into a citizen's automobile and his inspection of personal effects located within are significant encroachments upon that citizen's privacy interests."[30] In reversing the indictment against the defendant in *Torres*, the court found that there was no basis for the officer "to reach into the car and remove the shoulder bag, since its presence presented no immediate threat to the officer's safety" once the occupants had been removed from the car and frisked.[31] The court noted that this provides more protection than is afforded under the United States Supreme Court's decision in *Michigan v. Long*.[32]

In *Michigan v. Long*, the Supreme Court held that it was permissible for officers to do a search of the entire passenger compartment of a car when a protective search of the occupants was justified.[33] This decision was based on the theory that the suspect would have access to the weapon immediately after the stop terminated, and therefore, would be a threat to officers. In *Torres*, the court of appeals rejected the rationale provided in *Michigan v. Long*, stating that such a rationale allowed searches of the passenger compartments to be "justified purely on [a] theoretical basis. . .."[34] However, despite this higher standard, the *Torres* court did state that certain circumstances can lead to a "conclusion that a weapon located within the vehicle presents an actual and specific danger to the officer's safety sufficient to justify a further intrusion, notwithstanding the suspect's inability to gain immediate access to that weapon."[35]

In *People v. Carvey*, the court reaffirmed its requirement of an actual threat to justify a more intrusive search of the car.[36] The court required that the officers perceive "'an actual and specific danger' to their safety"[37] before proceeding to a protective search of the passenger compartment when the suspect no longer has im-

29. *Torres*, 74 N.Y.2d at 226.
30. *Id.* at 230.
31. *Id.* at 227.
32. *Id.* at 226.
33. Michigan v. Long, 463 U.S. 1032 (1983).
34. *Torres*, 74 N.Y.2d at 231 n.4.
35. *Id.*
36. People v Carvey, 89 N.Y.2d 707 (1997).
37. *Id.* at 712.

mediate access to the area. In *Carvey*, the officers observed the defendant place something underneath the seat during a lawful traffic stop.[38] Upon approaching the car, the officers noticed that the defendant was wearing a bulletproof vest.[39] The court found that the defendant wearing a bulletproof vest combined with his suspicious behavior was enough to cause the officers to believe there was 'an actual and specific danger' to their safety.[40]

In the present case, the court found that the evidence clearly supported the "Appellate Division's conclusion that the officers could reasonably have concluded that a 'weapon located within the vehicle present[ed] an actual and specific danger to their safety.'"[41] The court noted that there had been a blatant disregard of the officers' lawful commands to pull over, an "obvious lack of concern for the safety of others"[42] by almost hitting a pedestrian, and furtive movements by the defendant during the chase.[43] These factors were sufficient cause for the officers to believe that the requisite "actual and specific danger" to their safety was present.[44]

IV. DISSENT

In both the appellate division and court of appeals, forceful dissents were written by jurists who rejected the majority's analysis of these facts under the standard set forth in *Torres*. At the appellate level, Judge Rosenberger of the First Department dissented from the opinion of four of his fellow panelists. At the court of appeals, Judge Ciparick, along with Chief Judge Kaye, also dissented from the opinion of the court.

Judge Ciparick felt that the "record [was] insufficient to support the appellate division's finding that there was an 'actual and specific danger' to officer safety."[45] First, the dissent points out that the entire encounter of the vehicle pulling away from the police officers and the reckless driving only lasted one-half of a city

38. *Id.* at 709.
39. *Id.*
40. *Id.* at 712.
41. *Mundo*, 99 N.Y.2d at 59 (quoting People v. Carvey, 89 N.Y.2d 707, 712 (1997)).
42. *Mundo*, 99 N.Y.2d at 59.
43. *Id.*
44. *Id.*
45. *Id.* (Ciparick, J. dissenting).

block.[46] The dissent also pointed out that the encounter never exceeded a top speed of 10 mph in the estimation of the officers.[47]

In terms of the appropriate test to apply, the dissent noted that the decision in *Torres* was intended to "provid[e] New Yorkers with greater constitutional protections than those afforded by the federal constitution. Specifically, building upon the bedrock of state precedent, [the court] adopted a two prong test, and if satisfied, justifies a limited intrusion into a suspect's vehicle."[48] The dissent further argued that although *Torres* set a rule that was more protective than the federal standard, it also allowed for an exception to this rule.[49] *Torres* allowed searches when the officer reasonably believed "that a weapon within the vehicle presents an actual and specific danger to the officer's safety."[50]

The dissent stated that the 'actual and specific danger' standard was clarified in *Carvey*, which required that there be a "substantial likelihood that a weapon be present in the vehicle."[51] In *Carvey*, this standard was satisfied because the defendant was wearing a bulletproof vest, which the court believed indicated the defendant was "ready and willing to use a weapon."[52]

In the present case, the dissent felt that the behavior of the defendant and his cohorts did not rise to the same level as the behavior of the defendant in *Carvey*. While noting that the behavior in this case was "highly unusual and inherently suspicious,"[53] the dissent stated that the behavior "[did] not indicate a willingness, nor a readiness, to act violently against the police."[54] Therefore, the dissent contends that the actions of the defendant did not establish that there was an "actual and specific danger" to the safety of the officers.

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46. *Mundo*, 99 N.Y.2d at 60.
47. *Id.*
48. *Id.*
49. *Id.* at 61.
50. *Torres*, 74 N.Y.2d at 231.
51. *Mundo*, 99 N.Y.2d at 61 (Ciparick, J. dissenting).
52. *Id.*
53. *Id.* at 63.
54. *Id.*

V. CONCLUSION

The New York Court of Appeals reaffirmed its standard that law enforcement searches of passenger compartment of vehicles are justified when based on "actual and specific danger" to the safety of the officers. Here, evasive driving maneuvers and furtive movements by the defendant-passenger were enough to allow officers to reasonably conclude that there was an "actual and specific danger" to their safety.

Christine Harrington