TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 23 | Number 2 Article 12

May 2014

Supreme Court, New York County, People v. Smith

Jessica Miller

SUPREME COURT OF NEW YORK
NEW YORK COUNTY

People v. Smith[1]
(decided June 23, 2006)

Defendant Smith was indicted for third degree criminal possession of a controlled substance.[2] His arrest was the result of a task force assembled in response to an increase in livery cab robberies in a specific Manhattan location.[3] Officers in the task force were assigned to patrol livery cabs containing male passengers.[4] Smith argued that the court should suppress the cocaine police seized from him during the "roving patrol" stop because the seizure occurred without reasonable suspicion.[5] According to Smith, the evidence was obtained in violation of the Fourth Amendment of the United States Constitution[6] and article 1, section 12 of the New York Constitution,[7] which protect individuals against unlawful searches

---

[1] No. 5584/05, 2006 N.Y. Slip Op. 51209U, at *1 (Sup. Ct. June 23, 2006).

[2] *Id.*, at *1. Smith was indicted for violating a New York statute, criminal possession of a controlled substance. N.Y. PENAL LAW § 220.16(12) (McKinney 2006) states in pertinent part: "A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses . . . one or more preparations, compounds, mixtures or substances containing a narcotic drug . . . [which] are of an aggregate weight of one-half ounce or more . . . ."

[3] *Smith*, 2006 N.Y. Slip Op. 51209U, at *1.

[4] *Id.*, at **1-2.

[5] *Id.*, at *1.

[6] U.S. CONST. amend. IV 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 . . . ."

[7] N.Y. CONST. art. I, § 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

and seizures.[8] After using factors established in *Brown v. Texas*[9] to analyze Smith's claim, the court held that the roving patrol "constituted a reasonable seizure conducted pursuant to sufficient limitations on the discretion of the officers in the field."[10]

On September 28, 2005, the Commander of the Manhattan North Task Force received a "pattern sheet" derived from police statistics listing approximately six livery cab robberies within a ten block radius in Manhattan, two of which occurred in the past twenty-four hours.[11] It identified the perpetrators of the recent crime wave as male passengers who robbed livery cab drivers in a specific area of Harlem.[12] In response to the Pattern Sheet, the Commander assigned all officers "to stop livery cabs" carrying male passengers in the specific vicinity where the robberies occurred.[13] As part of the "roving patrol," police stopped a livery cab containing a male passenger—the defendant, Kenny Smith.[14] Importantly, the police officers were in uniform, traveling in an unmarked car, and stopped the vehicle in the vicinity specified by the pattern sheet.[15]

When the officers approached the cab they noticed Smith's

---

not be violated . . . ."

[8] *Smith*, 2006 N.Y. Slip Op. 51209U, at *1.

[9] 443 U.S. 47, 50-51 (1983). In *Brown*, the Supreme Court weighed the public interest in being protected by the seizure against an individual's private interest in being free from discretionary intrusion by government officers. *Id.*

[10] *Smith*, 2006 N.Y. Slip Op. 51209U, at *7.

[11] *Id.*, at *1.

[12] *Id.*

[13] *Id.*, at **1-2. In support of the commander's preventative actions the court noted that "[w]here there is a pattern of crimes in a small area, over a short period of time, it is not unreasonable to believe that the perpetrators may well try again to repeat such activity." *Id.*, at *2 n.1.

[14] *Id.*, at *2.

[15] *Smith*, 2006 N.Y. Slip Op. 51209U, at *2.

nervous disposition.[16] Upon questioning the cab driver, the officers discovered that he had entered the cab at the same location where a robbery had occurred the prior night.[17] The officers asked him to exit the car and subsequently noticed a "bulge" in his right pocket.[18] After unsuccessfully asking Smith to empty his pockets, the officers searched Smith and found approximately two ounces of cocaine.[19]

To determine the reasonableness of the seizure, the *Smith* court examined the balancing test established by the Supreme Court in *Brown*, which requires courts to balance " 'the public interest [advanced by the seizure against] . . . the individual's right to personal security free from arbitrary interference by law officers.' "[20] In weighing each interest, the *Brown* Court examined three factors: " '[1] the gravity of the public concerns served by the seizure[;] [2] the degree to which the seizure advances the public interest[;] and [3] the severity of the interference with individual liberty.' "[21]

The *Smith* court explained that, "[b]oth the U.S. Supreme Court and the New York Court of Appeals apply stricter scrutiny to roving patrols then to fixed checkpoints."[22] Therefore, to uphold the search, the *Smith* court had to find that the roving patrol was

---

[16] *Id.*, at *2. The officer testified that he noticed Smith's "shoulders going back and forth," he was "anxious, nervous, [and] breathing heavy" and attempted to "stick something in his waist or his pockets." *Id.*

[17] *Id.*

[18] *Id.* The officer believed that the bulge, although not a gun, "could have been a knife." *Id.*

[19] *Id.*

[20] *Smith*, 2006 N.Y. Slip Op. 51209U, at **2-3 (quoting United States v. Brigoni-Ponce, 422 U.S. 873, 878 (1975)).

[21] *Id.*, at *3 (quoting *Brown*, 443 U.S. at 50-51).

[22] *Id.*

"conducted pursuant to explicit, neutral limitations on officer discretion."[23] Moreover, the court noted that the New York Court of Appeals considers suspicionless patrol stops to be suspect due to their intrusive nature and heightened potential for abuse of discretion by police officers.[24]

In applying *Brown*'s first two prongs, the court found that the roving patrol satisfied both the first prong, the existence of a legitimate public interest, and the second prong, whether the implementation of the patrol sufficiently advanced that interest.[25] The court recognized a valid public interest in protecting livery cab drivers from a wave of violent robberies.[26] Specifically, in order to satisfy the second prong, " 'some empirical data [must be established] demonstrating the effectiveness of the means chosen by law enforcement.' "[27] The court held that the roving patrol was the least restrictive means because the pattern sheet established that a fixed checkpoint would effectively address this specific crime problem.[28]

The court then focused on *Brown*'s third prong, the stop's

---

[23] *Id.*, at *5.

[24] *Id.*, at *4.

[25] *Smith*, 2006 N.Y. Slip Op. 51209U, at *5. Under the first prong of the *Brown* standard the court must find "that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual . . . ." *Brown*, 443 U.S. at 51.

[26] *Smith*, 2006 N.Y. Slip Op. 51209U, at *5.

[27] *Id.* (quoting *In re* Muhammad F., 722 N.E.2d 45, 49-50 (N.Y. 1999)).

[28] *Id.* Because the Pattern Sheet specified only male passengers in a specific area, the roving patrol was used to address "specific, current and violent crimes against an identifiable class of victims," therefore a fixed checkpoint would be ineffective considering the specificity of the target and victim. *Id. But see Muhammad F.*, 722 N.E.2d at 50-51 (stating that the prosecution failed to provide empirical evidence that the roving patrol, as opposed to the fixed checkpoint stops, was a "reasonably effective means of furthering the State interest in reducing violent crimes against taxi drivers.").

impact on Smith's liberty interests.[29] The roving patrol's objective and subjective intrusions were considered and neither was found to be unjustifiably invasive.[30] Objectively, the stops were non-intrusive because the patrol had a limited purpose, consisting of a limited target and limited area, and only upon noticing Smith's nervous demeanor did they ask him to step out of the car.[31] The subjective intrusion was limited because the officers were in uniform with their lights on—clearly alerting the driver to the police stop.[32] Further, the roving patrol was sufficiently limited, in terms of officer discretion, because the patrol was constrained to a limited area, a certain type of vehicle, and a specific time period.[33] In sum, the court denied the defendants motion to suppress the evidence, upholding the constitutionality of the seizure.[34]

The Supreme Court enunciated a balancing standard to determine violations of the Fourth Amendment's guarantee against unreasonable seizure in *Brown*.[35] The *Brown* standard developed from a line of unlawful search and seizure decisions. The first of such cases is *United States v Brigoni-Ponce*.[36]

---

[29] *Smith*, 2006 N.Y. Slip Op. 51209U, at *5.

[30] *Id.*, at **5-6. *See also* United States v. Martinez-Fuerte, 428 U.S. 543, 558 (1976) (noting that routine checkpoint stops cause limited objective intrusion because of the brief nature of the stop and the questioning, and, subjectively, the motorist is aware that a checkpoint is approaching).

[31] *Smith*, 2006 N.Y. Slip Op. 51209U, at *5.

[32] *Id.*, at *6. *But see Muhammad F.*, 722 N.E.2d at 51 (finding a police stop to be subjectively intrusive because the officers were in unmarked cars, without uniforms, thus showing no " 'visible signs of the officers' authority' ").

[33] *Smith*, 2006 N.Y. Slip Op. 51209U, at *6.

[34] *Id.*, at **7-8.

[35] *Brown*, 443 U.S. at 50-51.

[36] *Brigoni-Ponce*, 422 U.S. 873.

In *Brigoni-Ponce*, officers on a roving patrol stopped a vehicle solely because the passengers were Mexican.[37] The Court examined whether the police officers' stop of a vehicle containing suspected illegal aliens violated the Fourth Amendment.[38] The Court held that a roving patrol stop is constitutional so long as the officer is "aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country."[39] The Court weighed the public interest of restricting illegal aliens in the country against the interferences in one's individual freedom resulting from the stop and "[was] not convinced that the legitimate needs of law enforcement require this degree of interference with lawful traffic."[40] The seizure was unconstitutional because the suspicionless patrol would subject citizens to limitless interferences with their individual liberties at the sole discretion of the officers, thereby outweighing the legitimate interest.[41]

In contrast, the Court in *United States v. Martinez-Fuerte*[42] held that suspicionless stops at fixed checkpoints on the Mexican border were constitutional because, unlike a roving patrol stop, a

---

[37] *Id.* at 875. The officers testified that their only grounds for suspicion were the fact that the passengers "appeared to be of Mexican descent." *Id.* Upon questioning, the officers learned that the passengers and the driver were in fact aliens who illegally entered the country. *Id.*

[38] *Id.* at 876.

[39] *Id.* at 884. The Court limited the ability to stop vehicles absent probable cause only in circumstances where the officer has reasonable suspicion to believe that a crime has occurred. *Id.* Furthermore, the Court pointed out that in certain circumstances probable cause for either an arrest or a search is unnecessary—especially in circumstances where alternative methods of searching are impractical. *Id.* at 880-81.

[40] *Id.* at 883.

[41] *Brigoni-Ponce*, 422 U.S. at 882.

[42] *Martinez-Fuerte*, 428 U.S. 543.

fixed checkpoint is non-intrusive and involves less discretion on the part of the law enforcement.[43] The defendants argued that the permanent checkpoints established by border patrol were unconstitutional because the officers lacked reasonable suspicion to check the vehicles.[44] The Court balanced the public interest protecting the border against the individual's expectation of privacy in an automobile.[45] Here, the public interest outweighed the individual's expectation of privacy because the expectation of privacy in a vehicle is less than the expectation in one's home and permanent checkpoints created only a minimal intrusion upon a motorist's privacy rights.[46] Accordingly, the Court found a legitimate public interest existed and held that the fixed checkpoint stops could be made absent individualized suspicion.[47]

Following *Brigoni-Ponce* and *Martinez-Fuerte*, the Supreme Court was again faced with the issue of whether an automobile stop is constitutionally permissible. In *Delaware v. Prouse*,[48] an officer stopped a vehicle to check a driver's license and registration and subsequently arrested the defendant for possession of a controlled substance.[49] The Court held that absent exceptional circumstances,

---

[43] *Id.* at 559, 562 (holding that the stop was non-intrusive and non-arbitrary because all vehicles were stopped and all motorists knew that a fixed checkpoint was ahead).

[44] *Id.* at 545.

[45] *Id.* at 561-62.

[46] *Id.*

[47] *Martinez-Fuerte*, 428 U.S. at 562. *See also* City of Indianapolis v. Edmond, 531 U.S. 32, 42-43 (2000) ("[I]n determining whether individualized suspicion is required, we must consider the nature of the interests threatened and their connection to the particular law enforcement practices at issue.").

[48] 440 U.S. 648 (1979).

[49] *Id.* at 650. The patrolman testified that he pulled the car over for no reason other than that he was not answering any calls at the time and upon approaching the car he smelled a

stopping a car for no reason but to check a license and registration is unreasonable and constitutes an unconstitutional seizure.[50] Moreover, stopping a vehicle for traffic violations provides a better expedient to ensure that license and registration violations are kept in check.[51] Therefore, the liberty interest to be free from intrusion outweighed the legitimate interest of ensuring licensed drivers on the road.[52]

Supreme Court jurisprudence culminated in the current *Brown* test, which laid out the factors used to balance the reasonableness of seizures.[53] In *Brown*, the issue before the Court was whether a Texas statute which required an individual to identify himself upon police request violated the defendant's Fourth Amendment rights.[54] The Court held that statute's application in *Brown* violated the Fourth Amendment because officers arrested the defendant without the necessary reasonable suspicion.[55]

The balancing test established in *Brown* weighs the public's interest in the seizure against an individual's "right to personal security free from arbitrary interference by law officers."[56] Specifically, the test requires a consideration of: "[1] the gravity of the public concerns served by the seizure[;] [2] the degree to which

---

strong scent of marijuana coming from the vehicle. *Id.*

[50] *Id.* at 663.

[51] *Id.* at 659.

[52] *Id.* at 660. *But see Brigoni-Ponce*, 422 U.S. at 881 (upholding the constitutionality of the officers' stop because of a valid public interest, minimal intrusion on individual freedoms, and no other reasonable alternatives available to advance these interest).

[53] *Brown*, 443 U.S. at 50-51.

[54] *Id.* at 48-49.

[55] *Id.* at 53.

[56] *Id.* at 50 (citing Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977); *Brigoni-Ponce*, 422

the seizure advances the public interest[;] and [3] the severity of the interference with individual liberty."[57] In balancing this interest, the Court was concerned with "assur[ing] that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field."[58]

The officers in *Brown* claimed that they stopped the appellant because he "looked suspicious."[59] Absent other factors, the fact that appellant was in a high drug trafficking neighborhood was not a sufficient foundation for the officers to conclude the appellant was involved with criminal behavior.[60] Although there is a legitimate interest in preventing crime, in the absence of any other facts, the balancing of the public interest against right to individual liberty "tilts in favor of freedom from police interference."[61] Ultimately, the Court held that "[w]hen such a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits."[62]

The New York Court of Appeals adopted *Brown* to determine the reasonableness of searches of seizures.[63] In *In re Muhammad F.*, plain clothes officers used unmarked cars in a roving patrol to pull

---

U.S. at 878).

[57] *Id.* at 50-51.

[58] *Brown*, 443 U.S. at 51. The Court further explicates that to combat arbitrary invasions, the seizure "must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Id.* (citing *Prouse*, 440 U.S. at 654-55).

[59] *Id.* at 51-52.

[60] *Id.* at 52.

[61] *Id.*

[62] *Id.* at 52.

[63] *Smith*, 2006 N.Y. Slip Op. 51209U, at *2. The New York Court of Appeals adopted the *Brown* standard in *Muhammad F.* *Id.*

over livery cabs.[64] The stops were used to perform "safety check[s]," informing drivers of recent crimes and preventing illegal activity.[65] As a result of these stops, the defendants, passengers in the livery cabs, were arrested for possession of controlled substances.[66] The court noted that suspicionless stops are generally held to be suspect because of the disruption of individual liberty as well as the officer's unlimited use of discretion.[67] The *Muhammad F.* court weighed the principles in *Brown*, and declared that the taxicabs stops were unreasonable and unconstitutional under these circumstances.[68] The court held that, although prevention of crime is a valid government interest, there was no showing of the unavailability of a less intrusive option to satisfy this interest.[69] Furthermore, because the officers in this case were not in uniform and in unmarked cars, the potential for subjective intrusiveness was heightened because innocent drivers would be frightened by the patrol.[70] The court found that there was a failure to establish the reasonableness of the patrol stops under the three-part *Brown* test.[71] Moreover, the stops did not satisfy the constitutional requirement that they be carried out in a manner that curbs the potentially limitless discretion of the law enforcement

---

[64] *Muhammad F.*, 722 N.E.2d at 46.

[65] *Id.* (internal quotation marks omitted).

[66] *Id.* at 47.

[67] *Id.* at 50.

[68] *Id.*

[69] *Muhammad F.*, 722 N.E.2d at 51. The prosecution failed to show any empirical evidence that the suspicionless patrol stops were an effective means in crime prevention. *Id.*

[70] *Id. But see Martinez-Fuerte*, 428 U.S. at 559 (explaining that motorists confronted by stationary checkpoints are not subjectively intruded upon as they are not taken surprised by the checkpoints because they know of there existence).

[71] *Muhammad F.*, 722 N.E.2d at 52 (citing *Brown*, 443 U.S. at 51).

officers.[72]

In sum, the New York Court of Appeals sets New York's seizure guarantee equal to the minimum constitutional standard developed in *Brown*.[73] Both *Smith* and *Muhammad F.* apply the same standard, yet they reached different results. It seems that protecting against crime constitutes a legitimate government interest. Therefore, the key difference between the two cases is the degree to which the action advances the legitimate interest and the intrusiveness of the search on individual liberty.[74] Thus, to prevail on a search and seizure claim on similar facts in New York, the proponent must show that the degree of police officer's intrusiveness far outweighed the legitimate interest of protecting against crime and that the officers had unlimited discretion in advancing the interest.

Jessica Miller

---

[72] *Id.*

[73] *Smith*, 2006 N.Y. Slip Op. 51209U, at *4 ("[E]ach case requires a court examine 'whether a systemized non-arbitrary method' was employed to accomplish the stops and conduct 'a particularized inquiry into the reasonableness of the stops' under the *Brown v. Texas* analysis." (quoting *In re Muhammad F.*, 722 N.E.2d at 50)).

[74] *Id.*, at **5-6.