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

Touro Law Review

Volume 19
Number 2 *New York State Constitutional Decisions: 2002 Compilation*

Article 18

April 2015

Appellate Division, Fourth Department, People v. Taylor

Aileen R. Kavanagh

Appellate Division, Fourth Department, People v. Taylor

Cover Page Footnote
19-2

SUPREME COURT, APPELLATE DIVISION FOURTH DEPARTMENT

People v. Taylor[1]
(decided May 3, 2002)

Theodore L. Taylor was arrested and indicted for a violation of a municipal open container ordinance[2] in the presence of the arresting officer.[3] A subsequent search of Taylor revealed a crack pipe in his shirt pocket, and a strip search at the station house revealed several bags of cocaine in his pants.[4] Taylor moved to suppress the evidence seized from him after the arrest, claiming that the search was unreasonable in light of the constitutional safeguards afforded by the search and seizure clauses embedded in the Federal[5] and New York State[6] Constitutions.[7] The Steuben County Court granted Taylor's motion to suppress the physical evidence and the State appealed.[8] The lower court determined that the police were not permitted to conduct a full body search of Taylor without some other behavior which would give rise to suspicion that other illegal activity had occurred.[9] The Appellate Division, Fourth Department unanimously reversed the decision of the lower court and held that Taylor's arrest for the municipal open container violation did not prohibit the seizure of the crack pipe, and Taylor's movement of his legs and torso created a reasonable suspicion to strip search him.[10]

---

[1] 294 A.D.2d 825, 741 N.Y.S.2d 822 (4th Dep't 2002).

[2] N.Y. CRIM. PROC. LAW § 140.10 (McKinney 2002) states in pertinent part: "Subject to the provisions of subdivision two, a police officer may arrest a person for: Any offense when he has reasonable cause to believe that such person has committed such offense in his presence . . . ."

[3] *Taylor*, 294 A.D.2d at 825, 741 N.Y.S.2d at 823.

[4] *Id.*

[5] U.S. CONST. amend. IV provides 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. . . but upon probable cause . . . ."

[6] N.Y. CONST. art. I, § 12 provides in pertinent part: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . . ."

[7] *Taylor*, 294 A.D.2d at 825, 741 N.Y.S.2d at 823.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 826-27.

The facts of the case are as follows: A police officer for the City of Hornell approached Taylor who was standing on the sidewalk carrying an open can of beer.[11] The officer asked the defendant for his name and identification.[12] Because the defendant could not provide any identification, the police officer placed the defendant under arrest, pursuant to the policy of the City of Hornell Police Department.[13] The officer sought to obtain pre-arraignment bail rather than issue an appearance ticket in accordance with New York's Criminal Procedure Law Sections 150.20 and 150.30.[14] After the officer advised the defendant that he was under arrest and placed him in handcuffs, the officer noticed a "tubular object" in the defendant's shirt pocket.[15] The officer removed the object from the defendant's shirt pocket and identified it as a crack pipe.[16] As the officer was on bicycle patrol, he called for assistance and then became suspicious when he observed the defendant's movements of his legs and torso.[17] Taylor was then transported to the police station and subjected to a strip search by the arresting officer who found eight small bags of rock cocaine in the pocket of the defendant's pants.[18]

On appeal to the appellate court, the prosecution argued that the county court erred in disallowing the crack pipe and cocaine into evidence because the subsequent search and seizure

---

[11] *Id.* at 826.

[12] *Taylor*, 294 A.D.2d at 826, 741 N.Y.S.2d at 823.

[13] *Id.*

[14] N.Y. CRIM. PROC. LAW § 150.20(1) (McKinney 2002) states in pertinent part: "Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant for an offense other than a class A, B, C or D felony . . . he may, subject to the provisions of subdivisions three and four of section 150.40, instead issue to and serve upon such person an appearance ticket"; N.Y. CRIM. PROC. LAW § 150.20(2)(a) (McKinney 2002) states, *inter alia*: "The issuance and service of an appearance ticket under such circumstances may be conditioned upon a deposit of pre-arraignment bail, as provided in section 150.30"; N.Y. CRIM. PROC. LAW § 150.30 (1) (McKinney 2002) states: "Issuance and service of an appearance ticket by a police officer following an arrest without a warrant, as prescribed in subdivision two of section 150.20, may be made conditional upon the posting of a sum of money, known as pre-arraignment bail."

[15] *Taylor*, 294 A.D.2d at 826, 741 N.Y.S.2d at 823.

[16] *Id.*

[17] *Id.*

[18] *Id.*

was reasonable as incident to the arrest.[19] The Appellate Division, Fourth Department, unanimously agreed, reversed the lower court's order on the law, denied defendant's suppression motion, and reinstated the indictment.[20]

The appellate court concluded that the full search of the defendant conducted as a result of the arrest for the municipal open container violation was authorized and did not violate his rights under the Fourth Amendment to the United States Constitution.[21] The Court began its analysis with *United States v. Robinson*,[22] which articulates the traditional exception to the warrant requirement of the United States Constitution. In *Robinson*, the court held that a full body search incident to a person's arrest is permissible, and an officer is further authorized to seize evidence found as fruits of criminal conduct.[23]

Both the Fourth Amendment of the United States Constitution and Article I, Section 12 of the New York State Constitution provide that the "right of people to be secure in their persons . . . against unreasonable searches and seizures shall not be violated . . . ."[24] Albeit, the *Taylor* court recognized that the New York Court of Appeals determined that there are some limits on searches inherent in the New York State Constitution that are not imposed by the Federal Constitution.[25]

In *Robinson*, a police officer directed Robinson to stop his vehicle because he had determined four days earlier that Robinson was unlawfully operating the motor vehicle with a revoked operator's permit.[26] It was not disputed that the officer had probable cause to arrest the defendant and place him into custody.[27] As the officer performed a pat down search of the defendant, he felt an object in the left breast pocket of the defendant's coat.[28] After reaching into Robinson's pocket to

---

[19] *Id.* at 825, 741 N.Y.S.2d at 823.
[20] *Taylor*, 294 A.D.2d at 827, 741 N.Y.S.2d at 824.
[21] *Id.* at 826, 741 N.Y.S.2d at 823.
[22] 414 U.S. 218 (1973).
[23] *Id.* at 236-37.
[24] U.S. CONST. amend. IV; N.Y. CONST. art. I, § 12.
[25] *Taylor*, 294 A.D.2d at 824, 741 N.Y.S.2d at 822.
[26] *Robinson*, 414 U.S. at 220.
[27] *Id.* at 220-21.
[28] *Id.* at 222-23.

remove the object, the officer discovered a crumpled pack of cigarettes that contained items the officer realized were not cigarettes.[29] Upon further inspection of the cigarette pack, the officer discovered fourteen gel capsules of white powder which was heroin.[30] Robinson was convicted for possession and facilitation of concealment of heroin.[31] However, the Court of Appeals for the District of Columbia reversed the defendant's conviction and held that the heroin was obtained as a result of a search of the defendant's person which violated the Fourth Amendment.[32] The United States Supreme Court reversed the Court of Appeals and held that a full body search that was incident to the defendant's arrest was permissible.[33] The officer was further authorized to inspect the package of cigarettes and seize the heroin as fruits of criminal conduct.[34]

In *Robinson*, the Court noted, "[t]he search of respondent's person conducted by Officer Jenks in this case and the seizure from him of the heroin, were permissible under established Fourth Amendment Law."[35] Once a lawful custodial arrest is made, a more extensive exploration of the person is clearly authorized, not only to protect the officer, but to preserve evidence as well.[36] Further, the fact that the individual was arrested for a driving offense does not limit the officer's authority to search the individual.[37] Additionally, it is irrelevant that the officer did not believe he was in imminent danger, or that he did not suspect the defendant possessed a weapon, because the custodial arrest had already been made.[38]

---

[29] *Id.* at 223.

[30] *Id.*

[31] *Robinson*, 414 U.S. at 219.

[32] *Id.* at 219-20 (holding that because no further evidence of the crime for operating a vehicle with a revoked license could be found in a search of the defendant, the Court of Appeals held that only a search for weapons was justifiable).

[33] *Id.* at 236-37.

[34] *Id.* at 236.

[35] *Id.*

[36] *Robinson*, 414 U.S. at 234; *id.* at 224 ("It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment.")

[37] *Id.* at 234.

[38] *Id.* at 236.

On the same day *Robinson* was decided, the Supreme Court also decided *Gustafson v. Florida*,[39] and held that an arrest for a minor traffic offense, to wit, operating a motor vehicle without a valid driver's license in his possession, entitles the officer to conduct a full search of the defendant's person incident to the custodial arrest.[40] The search was held lawful even though the officer had no subjective fear for his safety or a suspicion that the defendant was armed.[41] The Court further held that the officer was justified in inspecting a package of cigarettes revealed in the course of his search, and was entitled to seize the marijuana contained in the package as fruits of criminal conduct.[42]

With respect to the state law claim, the appellate court in *Taylor* concluded that the search and seizure of the defendant, conducted as a result of the defendant's arrest for the municipal open container violation, did not violate the defendant's rights under Article I, Section 12 of the New York State Constitution.[43] The *Taylor* Court cited to *People v. Marsh*,[44] which limits the authority of an officer to conduct a search under the New York State Constitution. In *Marsh*, the issue was whether a search of the person is constitutionally authorized as incident to a custodial arrest for a minor traffic violation. A warrant was issued for the defendant in 1965 for speeding, a minor traffic violation committed in 1963.[45] When the defendant was arrested and placed under arrest, a search of the defendant's pocket revealed a matchbook that, when opened, indicated to the police officer that the defendant was engaged in the playing of policy,[46] prohibited

---

[39] 414 U.S. 260 (1973).

[40] *Id.* at 260.

[41] *Id.* at 266.

[42] *Id.*

[43] *Taylor*, 294 A.D.2d at 826, 741 N.Y.S.2d at 822 (citing People v. Welch, 289 A.D.2d 936, 734 N.Y.S.2d 768 (4th Dep't 2001); People v. Glasgow, 272 A.D.2d 914, 708 N.Y.S.2d 668 (4th Dep't 2000); People v. Barclay, 201 A.D.2d 952, 607 N.Y.S.2d 531 (4th Dep't 1994)).

[44] 20 N.Y.2d 98, 228 N.E.2d 783, 281 N.Y.S.2d 789 (1967).

[45] *Id.* at 100, 228 N.E.2d at 785, 281 N.Y.S.2d at 791.

[46] N.Y. PENAL LAW (McKinney 2002) § 225.10 defines "policy" as follows:

> 'Policy' or the numbers game, means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis

under New York's Penal Law Section 225.[47] The defendant challenged the denial of his suppression motion on both federal and state constitutional search and seizure grounds. The court subsequently held, "no search for a weapon is authorized as incident to an arrest for a traffic infraction, regardless of whether the arrest is made on the scene or pursuant to a warrant, unless the officer has reason to fear an assault or probable cause for believing that his prisoner has committed a crime."[48] Accordingly, the defendant's conviction was reversed and the motion to suppress was granted.[49] The court discussed of the legislative intent and reasoned that arrests made in conjunction with minor traffic violations do not grant permission to an officer to conduct a search of the person.[50] Such a search would be permissible only in circumstances where the officer reasonably suspects that he is in imminent danger because the defendant possesses a weapon, or the probability exists that the defendant possesses evidence of a crime greater than a traffic infraction.[51] Further, the court found it irrelevant that the defendant was initially issued a summons and his subsequent arrest warrant was issued as a result of his failure to appear.[52] The dissent in *Marsh* argued that taking a defendant into custody under an arrest for a traffic infraction is the same as taking a defendant into custody under an arrest for a felony, and wrote "it would be unnecessary and perhaps hazardous to deny a police officer the right to search when a defendant is being taken into custody . . . ."[53] However, the majority opinion is the current state of the law with respect to searches that accompany arrests for minor traffic violations in the State of New York.

---

of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

[47] *Marsh*, 20 N.Y.2d at 100, 228 N.E.2d at 785, 281 N.Y.S.2d at 791.

[48] *Id.* at 102, 228 N.E.2d at 786, 281 N.Y.S.2d at 793.

[49] *Id.* at 103, 228 N.E.2d at 787, 281 N.Y.S.2d at 793.

[50] *Id.* at 101, 228 N.E.2d at 786, 281 N.Y.S.2d at 792.

[51] *Id.*

[52] *Marsh*, 20 N.Y.2d at 102, 228 N.E.2d at 786, 281 N.Y.S.2d at 793. ("The warrant does no more than authorize the police officer to make an arrest for an offense which he did not witness. It does not give him any greater power to conduct a search than he would have possessed had he actually seen the infraction and thereupon stopped the offender.").

[53] *Id.* at 103, 228 N.E.2d at 787, 281 N.Y.S.2d at 794 (Scileppi, J., dissenting).

The *Taylor* Court further relied on *People v. Troiano*.[54] In *Troiano*, the defendant was arrested for driving with a suspended or revoked license pursuant to a warrant issued six days earlier.[55]

As opposed to a minor traffic infraction, aggravated unlicensed operation of a motor vehicle in New York State is a misdemeanor.[56] After the officer placed the defendant under arrest and conducted a pat down search, he recovered a loaded revolver in the waistband of the defendant's pants.[57] The defendant claimed that the search of his person was not authorized for an arrest pursuant to a traffic violation, and as such, the revolver should have been suppressed.[58] In affirming the order of the appellate court, the Court of Appeals stated, "[s]o long as the person is being taken into custody, he has lost whatever interest in privacy he had before the arrest, the taking into custody itself being the grossest intrusion upon his privacy."[59] Accordingly, the court held, "so long as the arrest is lawful, the consequent exposure to search is inevitable."[60] Furthermore, the concurring opinion agreed with the rationale in *Robinson*, in that this defendant's federal constitutional rights had not been violated.[61]

---

[54] 35 N.Y.2d 476, 323 N.E.2d 183, 363 N.Y.S.2d 943 (1974).

[55] *Id.* at 477, 323 N.E.2d at 184, 363 N.Y.S.2d at 943.

[56] *See* N.Y. VEH. & TRAF. LAW § 511(1)(b) (McKinney 2002) which states:

> [A] person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that such person's license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner.
>
> When a person is convicted of this offense, the sentence of the court must be: (i) a fine of not less than two hundred dollars nor more than five hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment."

[57] *Troiano*, 35 N.Y.2d 477, 323 N.E.2d at 184, 363 N.Y.S.2d at 944.

[58] *Id.* at 477-78, 323 N.E.2d at 184, 363 N.Y.S.2d at 944.

[59] *Id.* at 478, 323 N.E.2d at 184, 363 N.Y.S.2d at 944 (citations omitted).

[60] *Id.* at 478, 323 N.E.2d at 185, 363 N.Y.S.2d at 945.

[61] *Id.* at 479, 323 N.E.2d at 185, 363 N.Y.S.2d at 946-7 (Rabin, J., concurring).

The concurring decision in *Troiano* noted that New York State's Constitution provides no authority for a search incident to an arrest for an "infraction," as opposed to an arrest for a misdemeanor or felony charge, absent a reason for the officer to fear for his own safety or upon probable cause that the arrestee has committed a crime.[62] Whereas, the United States Supreme Court later held in *People v. Robinson*,[63] that a full search of the person incident to any lawful custodial arrest "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment."[64]

Despite these differences between the Federal and State Constitutions, the *Taylor* court relied on *People v. Weintraub*,[65] and reasoned that while the authority to search incident to a lawful custodial arrest is predicated upon the need to protect the officer's safety or preserve evidence, an officer need not later justify a concern for his own safety nor that there was a probability that he would find instrumentalities of a crime when he initiated the search.[66]

The majority in *Marsh* expressly stated that an exception to permitting a search incident to an arrest for a traffic violation is the reasonableness that the officer feared for his safety and that he had probable cause to believe that the offender possessed further evidence of a crime.[67]

---

[62] *Troiano*, 35 N.Y.2d at 479-80, 323 N.E.2d at 186, 363 N.Y.S.2d at 948-49 (Rabin, J., concurring) (citing People v. Marsh, 20 N.Y.2d 98, 228 N.E.2d 783, 281 N.Y.S.2d 789 (1967)).

[63] *Robinson*, 414 U.S. at 236.

[64] *Id.* at 235.

[65] 35 N.Y.2d 351, 320 N.E.2d 636, 361 N.Y.S.2d 897 (1974).

[66] *Taylor*, 294 A.D.2d at 826, 741 N.Y.S.2d at 822. *See* People v. Weintraub, 35 N.Y.2d 351, 353-54, 320 N.E.2d 636, 638, 361 N.Y.S.2d 897, 897 (1974) ("The lawful custodial arrest being a constitutionally reasonable intrusion upon the defendant's privacy, the search incident requires no additional justification."); *see also* People v. Barclay, 201 A.D.2d 952, 952, 607 N.Y.S.2d 531, 532 (1994) ("[D]efendant Barclay was lawfully arrested for exposure of a person, a violation, which was committed in the officer's presence. The search of Barclay was thus authorized as a search incident to a lawful arrest. Such a search is proper without regard to whether the officer fears that the suspect may be armed.") (citations omitted).

[67] *Marsh*, 20 N.Y.2d at 102, 228 N.E.2d at 786, 281 N.Y.S.2d at 793.

The Supreme Court of the State of New York has also recognized the stricter standard afforded under the New York State Constitution in the recent case of *People v. Henry*.[68] In *Henry*, the defendant was arrested for a minor traffic violation and a subsequent search revealed wire pliers, identified as a burglar's tool.[69] The court, in holding that the seizure of the wire pliers from the defendant's person was permissible as incident to the custodial arrest, outlined the exceptions laid out in *Troiano* as follows:

> The general rule [under New York State constitutional law] is that in traffic violation arrests the search incident to a lawful arrest exception cannot be used to justify a frisk: where the conclusion that the defendant may be armed cannot be justified; where there is an alternative to custodial arrest such as a summons; or 'because the arrest was a suspect pretext.'[70]

In conclusion, after the decision in *United States v. Robinson*, federal and New York State law are no longer identical with respect to their treatment of both their respective search and seizure clauses. As interpreted by the Supreme Court in *United States v. Robinson*, and the New York Court of Appeals in *Troiano*, the Fourth Amendment is not violated by a full search incident to a lawful custodial arrest in order to protect the officer's safety and to preserve evidence.[71] In *Marsh*, the New York Court

---

[68] 181 Misc. 2d 689, 694, 695 N.Y.S.2d 892, 896 (N.Y. Sup. Ct. Queens County 1999).

[69] *Id.* at 691, 695 N.Y.S.2d at 894.

[70] *Id.* at 694, 695 N.Y.S.2d at 896 (citing People v. Troiano, 35 N.Y.2d at 478, 323 N.E.2d at 185, 363 N.Y.S.2d at 945 (1974)). The court noted that under federal constitutional law, the search would be valid and proper as incident to an arrest even for a minor traffic violation. *Id.* at 694 n.2, 695 N.Y.S.2d at 896 n.2 (citing United States v. Robinson, 414 U.S. 218 (1973)). *But see* People v. Robinson, 97 N.Y.2d 341, 346, 767 N.E.2d 638, 640, 741 N.Y.S.2d 147, 149 (2001) (holding that a traffic stop by an officer who has probable cause to believe a motorist has committed a traffic infraction does not violate New York State's Constitution, even if officer's primary motivation is to conduct another investigation, adopting *Whren v. United States*, 517 U.S. 806 (1996) as a matter of state law).

[71] *Robinson*, 414 U.S. at 236; *see also* People v. Troiano, 35 N.Y.2d at 483, 323 N.E.2d at 188, 363 N.Y.S.2d at 1014-15 (1974) (Rabin, J., concurring).

of Appeals adopted the standard, as a matter of state law, that the only exception to prohibiting a search incident to an arrest for a traffic violation is when the officer had reason to fear an assault or had probable cause to believe that the offender possessed further evidence of a crime.[72] The Court of Appeals in *Weintraub* held that when conducting a search incident to a lawful custodial arrest, the officer need not justify whether he was in imminent fear nor that he suspected the offender possessed further evidence of a crime.[73] Therefore, in New York, upon making a lawful arrest for a minor traffic violation, a police officer may only search the individual if he reasonably believes he is in danger, or he has probable cause to believe that the individual has committed a crime.

Aileen R. Kavanagh

[72] *Marsh*, 20 N.Y.2d at 102, 228 N.E.2d at 786, 281 N.Y.S.2d at 793.

[73] *Weintraub*, 35 N.Y.2d at 353-54, 320 N.E.2d 636, 638, 361 N.Y.S.2d 897, 897.