

NEW YORK COURT OF APPEALS ROUNDUP

COURT OF APPEALS ADDRESSES CONSTITUTIONALITY OF N.Y.P.D. VEHICLE INVENTORY SEARCH PROTOCOL

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In *People v. Douglas*, the Court of Appeals recently addressed the constitutionality of the New York City Police Department's (N.Y.P.D.) protocol for inventory searches of vehicles, which represent one of the exceptions to the general rule that police must obtain a warrant before conducting a search.

The defendant was stopped by two N.Y.P.D. officers in October 2015 for several traffic violations. The officers discovered an illegal gravity knife in the defendant's pocket, arrested him, impounded his vehicle, and took him and his vehicle to the local precinct. The police officers conducted an inventory search of the vehicle in the precinct parking lot and recovered a firearm from the trunk.

The defendant moved to suppress the firearm and argued that the NYPD's inventory search protocol itself was unconstitutional because, inter alia, it affords the police too much discretion in how they conduct the search. The Supreme Court, New York County denied the suppression motion and the defendant pled guilty to criminal possession of a weapon in the second degree. Because he was a second felony offender, the defendant was sentenced to a determinate prison term of six years to be followed by five years of post-release supervision. The defendant appealed to the Appellate Division, First Department which affirmed the judgment and found that the police officers followed a valid procedure for their inventory search of the defendant's vehicle. 193 A.D.3d 622, 622 (1st Dep't 2021).

In a decision written by Judge Madeline Singas and joined by all of the judges other than Judge Jenny Rivera, the Court of Appeals affirmed the First Department's decision and found that the People had met their burden of establishing that the N.Y.P.D. inventory search protocol meets the constitutional minimum.

The N.Y.P.D. inventory search protocol is set forth in section 218-13 of the N.Y.P.D. Patrol Guide. It is designed to meet three objectives: i) to protect the defendant's property, ii) to protect the police against any claims that they lost or stole property, and iii) to protect the police and others from any dangerous instruments.

Section 218-13 of the N.Y.P.D. Patrol Guide instructs officers to take three steps in conducting an inventory search of a vehicle. First, they are to search the vehicle's interior thoroughly, including any areas that may contain valuables. The Patrol Guide provides a non-exhaustive list of specific areas to be searched such as the glove compartment, trunk, air vents and ash trays. Second, officers are directed to force open the trunk and glove compartment if it can be done with minimal damage. Third, officers must remove all valuables from the vehicle and invoice them on a specifically referenced invoice form.

The majority opinion briefly summarized the existing law governing inventory searches, noting that because a warrant is not required, the search must be conducted pursuant to a familiar routine procedure that places some limits on the police officers' discretion. The court recognized that the burden is on the People to establish that the procedure at issue meets the goals of protecting the defendant's property,

protecting the police from claims of lost property, and protecting people from harm from dangerous instruments and that the protocol sufficiently limits the discretion of the searching officers.

Based on the provisions of the Patrol Guide and the record established at trial, the majority found that the N.Y.P.D.'s inventory search protocol passed constitutional muster.

Judge Rivera disagreed in a dissenting opinion arguing that the Patrol Guide did not adequately cabin NYPD officers' discretion in conducting an inventory search. In particular, Judge Rivera pointed to the absence of any limits on the amount of time that may pass between the search and the invoicing and any instructions on how or where to safeguard the defendant's property.

Judge Rivera noted that, while the specific facts of the case were not at issue in what was a facial challenge to the protocol, the People's reliance on the protocol to defend a search where the property was placed in a plastic bag on the floor of the precinct house and not inventoried until 11 hours after the search reinforces the protocol's unconstitutional nature. In Judge Rivera's view, the inventory search protocol set forth in the N.Y.P.D. Patrol Guide does not provide sufficient limits on the police officers' discretion to ensure that searches are conducted consistently and reasonably.

Now that the Court of Appeals has spoken on this issue, criminal defendants may still seek to suppress items obtained in an inventory search based on the manner in which the search was conducted and based on the specific facts of the case, but they will no longer be able to argue that the N.Y.P.D.'s protocol itself is constitutionally deficient.

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