

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## Sloley v. VanBramer

No. 16-4213, United States Court of Appeals for the Second Circuit (December 12, 2019)

### SUMMARY

**\*\*Key Legal Topics:\*\*** Fourth Amendment; visual body cavity search incident to arrest; reasonable suspicion standard; qualified immunity; clearly established law; persuasive authority of state high court decisions; summary judgment; factual disputes. **\*\*Holdings:\*\*** The Second Circuit held that visual body cavity searches incident to any lawful arrest must be justified by specific, articulable facts supporting reasonable suspicion that the arrestee is secreting contraband inside a body cavity. This requirement was clearly established for qualified immunity purposes at the time of the search because the New York Court of Appeals' decision in *People v. Hall* (2008) put New York state police officers on notice of this federal constitutional rule. Because disputed facts precluded a finding of reasonable suspicion at summary judgment, the case was remanded for trial on the merits of the claim and on qualified immunity for defendant Eric VanBramer. Claims against Bryan VanBramer were properly dismissed due to lack of evidence of his personal involvement or awareness of the search.

### CASE DETAILS

|                       |                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Second Circuit                                                                                                       |
| WRITING FOR THE COURT | Pooler; Newman; Jacobs                                                                                                                                      |
| JURISDICTION          | Federal                                                                                                                                                     |
| DECIDED               | December 12, 2019                                                                                                                                           |
| DOCKET                | 16-4213                                                                                                                                                     |
| DISPOSITION           | Affirmed in part, vacated in part, and remanded.                                                                                                            |
| PROCEDURAL POSTURE    | Appeal from the United States District Court for the Northern District of New York (Gary L. Sharpe, J.) granting summary judgment for Defendants-Appellees. |
| STANDARD OF REVIEW    | We review de novo the district court's grant of summary judgment.                                                                                           |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                   |
| PARTIES               | Maxmillian Sloley v. Eric VanBramer, Bryan VanBramer                                                                                                        |

### TOPICS

[fourth amendment](#)

[search and seizure](#)

[section 1983](#)

[summary judgment](#)

[civil rights](#)

## PRACTICE AREAS

Civil Rights

Constitutional Law

## QUESTIONS PRESENTED

1. Whether visual body cavity searches incident to arrest require reasonable suspicion.
2. Whether the requirement was clearly established for qualified immunity purposes.
3. Whether disputed facts preclude summary judgment on reasonable suspicion and qualified immunity.
4. Whether Bryan VanBramer can be held liable for failure to intervene.

## HOLDINGS

1. Visual body cavity searches incident to arrest must be supported by specific, articulable facts supporting reasonable suspicion that the arrestee is secreting contraband inside the body cavity to be searched.
2. The requirement was clearly established by the New York Court of Appeals' decision in Hall and other persuasive authority, so a reasonable officer would have known that reasonable suspicion is required.
3. Disputed facts regarding whether Eric actually recovered cocaine from Sloley's car preclude summary judgment; a trial is required.
4. No, because there is no evidence that Bryan was aware that Eric was conducting or going to conduct a visual body cavity search.

## KEY QUOTATIONS

*"We hold that such searches must be justified by specific, articulable facts supporting reasonable suspicion that an arrestee is secreting contraband inside a body cavity." (at 4-5)*

*"We further hold that disputed facts preclude a finding of reasonable suspicion on a motion for summary judgment and remand for trial on the merits of Sloley's claim and the issue of Eric VanBramer's entitlement to qualified immunity." (at 5)*

*"Every reasonable officer in the VanBramers' position as New York State Troopers would have known that visual body cavity searches conducted incident to any arrest must additionally be supported by 'a specific, articulable factual basis supporting a reasonable suspicion to believe the arrestee secreted evidence inside a body cavity.'" (at 22)*

## FACTUAL BACKGROUND

On April 1, 2013, Sloley got into an argument with Rollins, took her phone, and she struck his car with a bat. Rollins called police. Sloley was arrested for harassment and criminal mischief. At the police station, Eric VanBramer conducted a visual body cavity search of Sloley after a drug dog alerted to Sloley's car and Eric claimed to find crack cocaine in the car. Sloley disputes the presence of drugs. The search revealed no contraband.

## PROCEDURAL HISTORY

The district court dismissed Sloley's claims against New York State and the VanBramers in their official capacity sua sponte. The VanBramers moved for summary judgment; the district court granted the motion, concluding that Bryan was not personally involved, the search was supported by reasonable suspicion, and Eric was entitled to qualified immunity. *Sloley v. VanBramer*, No. 1:14-cv-339 (GLS/CFH), 2016 WL 6603211 (N.D.N.Y. Nov. 8, 2016).

#### DISPOSITION

Affirmed in part, vacated in part, and remanded.

#### REMAND INSTRUCTIONS

Remand for trial on the merits of Sloley's claim and the issue of Eric VanBramer's qualified immunity.

#### CASES CITED

- *Gonzalez v. City of Schenectady*, 728 F.3d 149 (2d Cir. 2013)
- *Hartline v. Gallo*, 546 F.3d 95 (2d Cir. 2008)
- *Weber v. Dell*, 804 F.2d 796 (2d Cir. 1986)
- *Riley v. California*, 573 U.S. 373 (2014)
- *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016)
- *Chimel v. California*, 395 U.S. 752 (1969)
- *Terry v. Ohio*, 392 U.S. 1 (1968)
- *Florence v. Bd. of Chosen Freeholders of Burlington*, 566 U.S. 318 (2012)
- *Tennessee v. Garner*, 471 U.S. 1 (1985)
- *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001)
- *New York v. Belton*, 453 U.S. 454 (1981)
- *Arizona v. Gant*, 556 U.S. 332 (2009)
- *White v. Pauly*, 137 S. Ct. 548 (2017)
- *Mullenix v. Luna*, 136 S. Ct. 305 (2015)
- *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018)
- *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)
- *Wilson v. Layne*, 526 U.S. 603 (1999)
- *Reichle v. Howards*, 566 U.S. 658 (2012)
- *Hope v. Pelzer*, 536 U.S. 730 (2002)
- *Anderson v. Creighton*, 483 U.S. 635 (1987)
- *Outlaw v. City of Hartford*, 884 F.3d 351 (2d Cir. 2018)
- *Dancy v. McGinley*, 843 F.3d 93 (2d Cir. 2016)
- *Cifra v. Gen. Elec. Co.*, 252 F.3d 205 (2d Cir. 2001)
- *United States v. Arvizu*, 534 U.S. 266 (2002)

- *Navarette v. California*, 572 U.S. 393 (2014)
- *United States v. Muhammad*, 463 F.3d 115 (2d Cir. 2006)
- *Scott v. Fischer*, 616 F.3d 100 (2d Cir. 2010)
- *Charles W. v. Maul*, 214 F.3d 350 (2d Cir. 2000)
- *Buckley v. Rogerson*, 133 F.3d 1125 (8th Cir. 1998)
- *Tribble v. Gardner*, 860 F.2d 321 (9th Cir. 1988)
- *Swain v. Spinney*, 117 F.3d 1 (1st Cir. 1997)
- *Canedy v. Boardman*, 16 F.3d 183 (7th Cir. 1994)
- *Mary Beth G. v. City of Chicago*, 723 F.2d 1263 (7th Cir. 1983)
- *Arruda v. Fair*, 710 F.2d 886 (1st Cir. 1983)
- *People v. Hall*, 10 N.Y.3d 303 (2008)
- *People v. Mothersell*, 14 N.Y.3d 358 (2010)
- *People v. Harry*, 884 N.Y.S.2d 712 (1st Dep't 2009)
- *People v. Gonzalez*, 870 N.Y.S.2d 529 (3d Dep't 2008)
- *People v. Colon*, 913 N.Y.S.2d 658 (1st Dep't 2011)
- *People v. Bamisile*, 887 N.Y.S.2d 53 (1st Dep't 2009)
- *People v. Hunter*, 902 N.Y.S.2d 678 (3d Dep't 2010)
- *People v. Walker*, 810 N.Y.S.2d 592 (3d Dep't 2006)
- *People v. Taylor*, 741 N.Y.S.2d 822 (4th Dep't 2002)
- *People v. Banks*, 830 N.Y.S.2d 839 (3d Dep't 2007)
- *People v. Barnville*, 819 N.Y.S.2d 234 (1st Dep't 2006)
- *People v. Clayton*, 868 N.Y.S.2d 303 (2d Dep't 2008)
- *Sims v. Farrelly*, No. 10 Civ. 4765 (ER), 2013 WL 3972460 (S.D.N.Y. Aug. 2, 2013)
- *Sorrell v. Incorporated Village of Lynbrook*, No. 10 CV 49 (DRH) (GRB), 2012 WL 1999642 (E.D.N.Y. June 4, 2012)
- *Harriston v. Mead*, No. 05 CV 2058 (RJD) (LB), 2008 WL 4507608 (E.D.N.Y. Sept. 30, 2008)
- *Sarnicola v. County of Westchester*, 229 F. Supp. 2d 259 (S.D.N.Y. 2002)
- *Murcia v. County of Orange*, 226 F. Supp. 2d 489 (S.D.N.Y. 2002)
- *Tolan v. Cotton*, 134 S. Ct. 1861 (2014)
- *Pearson v. Callahan*, 555 U.S. 223 (2009)
- *Burg v. Gosselin*, 591 F.3d 95 (2d Cir. 2010)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)
- *Mitchell v. City of New York*, 841 F.3d 72 (2d Cir. 2016)
- *Wachtler v. County of Herkimer*, 35 F.3d 77 (2d Cir. 1994)
- *Anderson v. Branen*, 17 F.3d 552 (2d Cir. 1994)
- *Terebesi v. Torres*, 764 F.3d 217 (2d Cir. 2014)
- *Garcia v. Does*, 779 F.3d 84 (2d Cir. 2015)

- McGowan v. United States, 825 F.3d 118 (2d Cir. 2016)
- Varrone v. Bilotti, 123 F.3d 75 (2d Cir. 1997)
- Bell v. Wolfish, 441 U.S. 520 (1979)

#### CITED IN

- Sloley v. VanBramer, Sloley v. VanBramer, 945 F.3d 30, 38, 43 (2d Cir. 2019)
- Sloley v. VanBramer, Sloley v. VanBramer, 945 F.3d 30 (2d Cir. 2019)