

APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK, FIRST DEPARTMENT

People v. Wheeler

61 A.D.2d 737 · Decided February 2, 1978

SUMMARY

The defendant was convicted of robbery in the first degree after a television set was seized from him. The defendant argued that the initial stop by the police was unlawful and that the evidence obtained thereafter should be suppressed. The majority of the court affirmed the conviction, while the dissenting judge argued that the police did not have reasonable suspicion to stop the defendant. The case revolves around the issue of reasonable suspicion for a stop and the admissibility of evidence obtained after the stop.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of New York, First Department
WRITING FOR THE COURT	Kupferman; Lupiano; Silverman; Murphy
JURISDICTION	New York
DECIDED	February 2, 1978
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from conviction in the Supreme Court, Bronx County; judgment affirmed.
PRECEDENTIAL VALUE	published
PARTIES	People v. Wheeler

TOPICS

- search and seizure
- exclusionary rule
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure

QUESTIONS PRESENTED

1. Whether the police exceeded their authority in stopping and questioning the defendant without reasonable suspicion
2. Whether the seizure of the television set was lawful under the plain view doctrine

HOLDINGS

1. The police did not exceed their authority; the stop was justified by reasonable suspicion based on the defendant's behavior and the contemporaneous radio broadcast.
2. The seizure was lawful because the television was in plain view on a public street after a lawful stop.

KEY QUOTATIONS

"right" which is not entitled to any weight in the balance we strike between the power of the police to make reasonable inquiry and the right of citizens to be protected from unwarranted intrusions in their daily activities." (738)

"The judgment of conviction should be reversed, the plea of guilty vacated, the motion to suppress granted and this matter remitted to the Supreme Court for further proceedings not inconsistent herewith." (738)

FACTUAL BACKGROUND

The defendant exited an apartment building on the Grand Concourse carrying a television set, entered a gypsy cab, and was stopped by police who questioned him. After learning the defendant had lied about the source of the television, the officers received a radio broadcast reporting a burglary in the same building, identified the defendant as matching the description, and arrested him, seizing the television in plain view.

PROCEDURAL HISTORY

Defendant pleaded guilty to robbery in the first degree and was convicted in the Supreme Court, Bronx County. The conviction was appealed to the Appellate Division, which affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Cantor, 36 N.Y.2d 106 (1975)
- People v. King, 50 A.D.2d 521 (1977)
- People v. Davis, 36 N.Y.2d 280 (1975)
- People v. Lakin, 21 A.D.2d 902 (1965)
- People v. Anonymous, 48 Misc. 2d 713 (1972)

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