

## POINT I

### WHETHER THE TRIAL COURT ERRED WHEN IT FAILED TO PERFORM A CONFLICT-OF-LAW ANALYSIS AND APPLIED MILITARY LAW TO THE FOURTH AMENDMENT ISSUE OF THE SEARCH AND SEIZURE OF DYLAN FLYNN'S CELL PHONE

The trial court erred when it failed to perform a conflict-of-law analysis and applied Military Law to the Fourth Amendment issue of the search and seizure of Dylan Flynn's cell phone because under New York's conflict of law rules, New York has a paramount interest in the application of its laws to this case. New York Courts have consistently held that where there is a search and seizure in a different state and where there is a conflict of law, or even where there is no conflict of law, the law of the forum where the trial is held is applicable.

In this case, Dylan Flynn's cell phone was seized by an NCIS agent on a military base in Florida. Dylan was prosecuted with evidence obtained from that search for a crime that was alleged to have occurred in New York. It is well settled that where the crime alleged occurs in New York and the parties involved are New York residents, and the trial takes place in New York, New York will have a paramount interest in the outcome of the case, and, thus, New York law will apply.

The trial court erred when it failed to perform a conflict-of-law analysis and it erred when it applied Military Law to this case. The trial court's error was in both the choice-of-law and incorrectly applying Military Law and then incorrectly interpreting Military Law.

New York Conflict Of Law Rules

Before the Court addresses a conflict-of-law question, it must determine whether there is an actual conflict between the laws of the two jurisdictions. *Matter of Allstate Ins. Co.*, 81 N.Y.2d 219, 223 (1993). Where there is no conflict, then the law of the forum state where the action is being tried will apply. *Matter of Allstate Ins. Co.*, 81 N.Y.2d 219 (1993); *SNS Bank v. Citibank*, 7 A.D.3d 352, 354 (1<sup>st</sup> Dept. 2004); *Excess Ins. Co. v. Factory Mut. Ins. Co.*, 2 A.D.3d 150, 151 (1<sup>st</sup> Dept. 2003).

Although there are a number of distinctions between Military Law and New York Law as to their procedure and application, an analysis under either system of jurisprudence would result in the suppression of the cell phone and its contents in this case. Where the result would be the same or there is no conflict of law issue, New York Courts have consistently held that the law of the forum where the case is tried will apply. *Matter of Allstate Ins. Co.*, 81 N.Y.2d 219 (1993); *SNS Bank v.*

*Citibank*, 7 A.D.3d 352, 354 (1<sup>st</sup> Dept. 2004); *Excess Ins. Co. v. Factory Mut. Ins. Co.*, 2 A.D.3d 150, 151 (1<sup>st</sup> Dept. 2003). If this Court were to find that a conflict-of-law exists, New York's conflict-of-law rules has two different methods of analysis to determine which law would apply: the "procedural vs. substantive" analysis and the "paramount interest" analysis.

*New York Conflict Of Law Rules: Procedural v. Substantive Analysis*

New York Courts have opted for two methods of analysis to determine which law should apply. The first is the "procedural vs. substantive" analysis and the second is the "paramount interest" analysis. Under the procedural vs. substantive analysis, New York courts have looked to whether the right at issue was procedural or substantive. If the right was procedural, the forum's law applies. *People v. Benson*, 88 A.D.2d 229, 231 (3d Dept. 1982). If the right was substantive, the situs law applies. *People v. Graham*, 90 Misc2d 1019 (Sullivan Cty Ct. 1977). The choice-of-law analysis based on whether a right is deemed procedural or substantive has been criticized on the ground that the distinction is often unclear. As courts have attempted to use this framework and maintain the distinction between substantive and procedural matters, they have expressed dissatisfaction with the substantive vs. procedural analysis and have generally

opted for the interest analysis instead. *Intercontinental Planning, Limited v. Daystrom, Inc.*, 24 N.Y.2d 372, 381, 300 N.Y.S.2d 817 (1969); *Indosuez Intern. Finance B.V. v. National Reserve Bank*, 279 A.D.2d 408, 720 N.Y.S.2d 102 (1st Dep't 2001); *Elmaliach v. Bank of China Ltd.*, 110 A.D.3d 192 (1<sup>st</sup> Dept. 2013); *Butler v. Stagecoach Group, PLC*, 72 A.D.3d 1581 (4<sup>th</sup> Dept. 2010).

*New York Conflict Of Law Rules: Paramount Interest Analysis*

New York Courts have more frequently employed an interest analysis test, which is borrowed from the context of civil litigation where a court must determine which jurisdiction has a greater interest in the matter. *People v. Flores*, 28 Misc.3d 1213(A) (Sup. Ct. Bronx 2010); *People v. Crawford*, 152 Misc.2d 763, 774 (N.Y. Sup. Ct. 1991). In fact, the predominant trend amongst New York Courts is to apply the paramount interests analysis to any conflict of law issue. *People v. Benson*, 88 A.D.2d 229 (3<sup>rd</sup> Dept. 1982); *People v. Ostas*, 179 A.D.2d 893 (3<sup>rd</sup> Dept. 1992); *People v. Lerow*, 70 A.D.3d 66 (4<sup>th</sup> Dept. 2009).

In determining whether New York has a predominate interest, New York Courts have considered these factors: 1) where evidence is obtained outside of New York, but will be used to prosecute in New York, then New York has a paramount interest *People v. Ostas*, 179 A.D.2d 893, 894 (3d Dept. 1992); 2)

where the trial takes place in New York, then New York has a paramount interest *People v. Benson*, 88 A.D.2d 229 (3d Dept. 1982); 3) where the crime occurred in New York, then New York will have a paramount interest *People v. Lerow*, 70 A.D.3d 66 (4<sup>th</sup> Dept. 2009); 4) where the defendant and victim are both residents of New York, then New York has a paramount interest *People v. Edwards*, 2001 N.Y. Slip Op. 40617(U), *People v. Flores*, 28 Misc.3d 1213(A) (Sup. Ct. Bronx 2010).

An analysis of all these factors commonly used by New York Courts leads to the conclusion that New York Law must be applied in this case: 1) the evidence was obtained outside New York and was used to prosecute Mr. Flynn in New York; 2) the trial took place in New York; 3) the crime was alleged to have taken place in New York; and 4) both the defendant and the victim in this case are residents of New York. Furthermore, New York Courts have consistently held that procedural and evidentiary issues are governed by the law of the forum in which the case will be tried. *People v. Johnson*, 303 A.D.2d 903, 904 (3<sup>rd</sup> Dept. 2003).

The trial court, therefore, erred when it failed to perform a conflict-of-law analysis; it erred when it applied Military Law to the search and seizure issue and then incorrectly interpreted Military Law and denied the suppression motion.

Whether there exists a conflict-of-law in this case, or not, the law of New York must be applied.