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## Searches and Seizures

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Under both the New York State and United States Constitutions, an individual is considered “seized” when he or she has been detained and his or her freedom to walk away has been restrained.<sup>132</sup> Additionally, both constitutions require that such a seizure must be accompanied by a reasonable suspicion of criminality.<sup>133</sup> Absent this reasonable suspicion, both constitutions require the suppression of any evidence obtained during the seizure.<sup>134</sup>

People v. Yancy<sup>135</sup>  
(decided July 14, 1995)

Appellants, Derek Yancy and Joseph Chapman, challenged the denial of motions to suppress physical evidence seized by police officers during warrantless searches of each appellant’s car.<sup>136</sup> The ground for appeal was based on a violation of the New York State Constitutional<sup>137</sup> and the Fourth Amendment<sup>138</sup> protections from unreasonable searches and seizures.<sup>139</sup> The New York Court of Appeals, in a consolidated opinion, denied their motions and held that in both instances the police officers had probable

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discretion based upon the mere right to request information, a Pandora’s box of pretextual police stops would be opened.” *Id.*

132. *See* Terry v. Ohio, 392 U.S. 1, 17 (1968); People v. Ingle, 36 N.Y.2d 413, 418, 330 N.E.2d 39, 43, 369 N.Y.S.2d 67, 72 (1975).

133. *See* People v. May, 81 N.Y.2d 725, 728, 609 N.E.2d 113, 115, 593 N.Y.S.2d 760, 762 (1992).

134. *See* Wesley, 73 N.Y.2d at 354-55, 538 N.E.2d at 78, 540 N.Y.S.2d at 759.

135. 86 N.Y.2d 239, 654 N.E.2d 1233, 630 N.Y.S.2d 985 (1995).

136. *Id.* at 242, 654 N.E.2d at 1234, 630 N.Y.S.2d at 986.

137. N.Y. CONST. art. I, § 12. This section provides in relevant 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 . . . .” *Id.*

138. U.S. CONST. amend. IV. The Fourth Amendment provides in relevant 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 . . . .” *Id.*

139. *Yancy*, 86 N.Y.2d at 243, 654 N.E.2d at 1234, 630 N.Y.S.2d at 986.

cause to search each defendant's car.<sup>140</sup> Therefore, there was no violation of the defendants' constitutional right to be free from unreasonable searches and seizures.

#### People v. Chapman

"The screeching tires of a cream colored Audi turning onto Broadway at a high rate of speed, forcing three pedestrians to jump out of the crosswalk, caught the attention of two uniformed police officers sitting in their marked police car."<sup>141</sup> The police officers followed the car.<sup>142</sup> After the Audi ran a stop sign, the officers pulled the vehicle over and approached the car from both sides.<sup>143</sup> One of the police officers alerted his partner to the fact that he observed an open shopping bag filled with vials and caps on the floor behind the passenger.<sup>144</sup> After receiving no response to questions pertaining to ownership of the vials or what they were being used for, the police officers arrested the three men in the car for "criminally using drug paraphernalia" and issued two summonses to the driver; one for failing to stop at a stop sign and the other for failing to yield to a pedestrian in a crosswalk.<sup>145</sup>

The police officers searched the vehicle and found 200 empty vials and matching caps, a false bottomed bread crumb container, and a carton of hot chocolate in the shopping bag.<sup>146</sup> Upon removal of the false bottom in the bread crumb container, the police officers found a bag of crack cocaine.<sup>147</sup> The "[d]efendant [Chapman] then volunteered that he came to buy the cocaine for someone else and his two companions had nothing to do with 'it.'"<sup>148</sup> At the precinct, after he was read his *Miranda* rights, the defendant denied selling crack.<sup>149</sup> However, he admitted to

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140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 243, 654 N.E.2d at 1234-35, 630 N.Y.S.2d at 986-87.

146. *Id.* at 243, 654 N.E.2d at 1235, 630 N.Y.S.2d at 987.

147. *Id.*

148. *Id.*

149. *Id.*

buying the crack on 140th Street and maintained that he bought it for someone else.<sup>150</sup>

### People v. Yancy

While directing gridlock traffic, a police officer noticed that “[t]he driver of a white Nissan would not make eye contact” with him.<sup>151</sup> Thus, in order to tell the driver to move the car, the police officer approached the car on foot.<sup>152</sup> As he passed the back seat, he noticed an open paper bag.<sup>153</sup> The police officer directed the defendant to pull over to the curb while he radioed for assistance.<sup>154</sup> Once “back up” arrived, the police officer ordered the two men in the car to step out and inquired as to what was in the bag.<sup>155</sup> The defendant, Yancy, responded, ““bottles.””<sup>156</sup> The police officer, familiar with drug lingo, translated that this meant vials used for transporting crack cocaine, and as a result, the officer arrested the men.<sup>157</sup> The police officers then searched the car and found an “Alf” doll filled with cocaine and paper to package it.<sup>158</sup> In addition, the paper bag contained vials and matching vial caps.<sup>159</sup>

The defendant plead guilty to attempted criminal possession of a controlled substance and the trial court sentenced him to three to six years.<sup>160</sup> The defendant made a motion to vacate the sentence because the proper sentencing procedure had not been observed.<sup>161</sup> The New York Court of Appeals granted the motion and vacated the sentence.<sup>162</sup> However, the prosecutor “filed a predicate offender statement which listed a New Jersey robbery

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150. *Id.*

151. *Id.* at 244, 654 N.E.2d at 1235, 630 N.Y.S.2d at 987.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 245, 654 N.E.2d at 1235, 630 N.Y.S.2d at 987.

161. *Id.*

162. *Id.*

conviction.”<sup>163</sup> The court determined that the New Jersey crime constituted a felony in New York and the defendant was resented to his original three to six years.<sup>164</sup>

Generally, searches without a warrant are “per se unreasonable.”<sup>165</sup> However, one well recognized exception to this rule applies to automobiles. For example, in *California v. Carney*,<sup>166</sup> the Supreme Court held that the exception that automobile searches do not require a warrant applies to movable mobile homes.<sup>167</sup> In *Carney*, the Court reasoned that warrantless searches of automobiles are acceptable for two reasons.<sup>168</sup> First, this exception is recognized based on the fact that automobiles are mobile and as a result, a high probability exists that contraband would “disappear.”<sup>169</sup> Second, a person’s reasonable expectation of privacy is diminished when traveling in an automobile.<sup>170</sup> Furthermore, in *California v. Acevedo*,<sup>171</sup> the United States Supreme Court held that a container located inside an automobile is subject to a warrantless search as long as law enforcement officers have probable cause to believe that contraband or evidence is contained within it.<sup>172</sup>

In *People v. Belton*,<sup>173</sup> the New York Court of Appeals held that warrantless searches of a vehicle and any closed containers within the passenger section of the vehicle are permitted as long as a valid arrest has been made.<sup>174</sup> In *Belton*, the defendant was

163. *Id.* at 245, 654 N.E.2d at 1235-36, 630 N.Y.S.2d at 987-88.

164. *Id.*

165. *Id.* at 245-46, 654 N.E.2d at 1236, 630 N.Y.S.2d at 988.

166. 471 U.S. 386 (1985).

167. *Id.* at 388. Law enforcement officers searched a mobile home after receiving information about what was inside, giving rise to probable cause. *Id.* at 388-89. The Court held that this search was reasonable and a warrant was not needed because there was “abundant” probable cause that the defendant was distributing drugs from the vehicle. *Id.* at 395.

168. *Id.* at 392-93.

169. *Id.*

170. *Id.*

171. 500 U.S. 565 (1991).

172. *Id.* at 580.

173. 55 N.Y.2d 49, 432 N.E.2d 745, 447 N.Y.S.2d 873 (1982).

174. *Id.* at 51, 432 N.E.2d at 746, 447 N.Y.S.2d at 874.

arrested for unlawful possession of a controlled substance when a state trooper pulled the car over for a traffic infraction.<sup>175</sup> When the police approached the car, they smelled marijuana and noticed rolling papers<sup>176</sup> on the floor of the car.<sup>177</sup> The police officers arrested the defendants and searched the car where they found a black leather jacket that contained cocaine in a zippered pocket.<sup>178</sup> The court found that the search was reasonable because probable cause leading to a valid arrest authorizes a warrantless search.<sup>179</sup>

In *People v. McRay*,<sup>180</sup> the court delineated the minimum level of proof necessary to show probable cause.<sup>181</sup> The court noted several indications where probable cause may be found, including a police officer's experience and training in narcotics investigations, acts occurring in an area with high instances of drug trafficking, or a sighting of paraphernalia frequently used in drug trafficking.<sup>182</sup> Using this standard for probable cause and the above standards to determine the permissibility of warrantless searches, the New York Court of Appeals, in *Yancy*, found

175. *Id.*

176. Also known as "wraps" or "sheets."

177. *Belton*, 55 N.Y.2d at 51, 432 N.E.2d at 746, 447 N.Y.S.2d at 874.

178. *Id.*

179. *Id.* at 54, 432 N.E.2d at 747-48, 447 N.Y.S.2d at 876. *See People v. Oden*, 36 N.Y.2d 382, 329 N.E.2d 188, 368 N.Y.S.2d 508 (1975). "Probable cause exists if the facts and circumstances known to the arresting officer warrant a prudent man in believing that the offense has been committed." *Id.* at 384, 329 N.E.2d at 190, 368 N.Y.S.2d at 511 (citations omitted). This means that if an officer notices that in the vehicle there is an article that the officer knows is used for illicit purposes or that there is the presence of "additional relevant behavior or circumstances," then the officer has sufficient probable cause to justify a warrantless search. *Yancy*, 86 N.Y.2d at 245, 654 N.E.2d at 1236, 630 N.Y.S.2d at 988. *See e.g.*, *Coolidge v. New Hampshire*, 403 U.S. 443, 446, (1971); *People v. DiStefano*, 38 N.Y.2d 640, 345 N.E.2d 548, 382 N.Y.S.2d 5 (1976); *People v. Spinelli*, 35 N.Y.2d 77, 315 N.E.2d 792, 358 N.Y.S.2d 743 (1974).

180. 51 N.Y.2d 594, 416 N.E.2d 1015, 435 N.Y.S.2d 679 (1980).

181. *Id.* at 601, 416 N.E.2d at 1018, 435 N.Y.S.2d at 682.

182. *Id.* at 601-02, 416 N.E.2d at 1018, 435 N.Y.S.2d at 682-83. In *McRay*, the court of appeals stated that "a glassine envelope is a 'telltale sign of heroin.'" *Id.* (citations omitted).

sufficient evidence indicating the existence of probable cause: the traffic infractions; the officers' observation of the vials in the bags; the police training in narcotics enabling them to deduce that the vials were not for personal use; and the defendants' responses and conduct during the routine traffic stop.<sup>183</sup> Without more, the court concluded that the probable cause for the "warrantless searches and seizures did not transgress the Federal or State constitutional prohibition against unreasonable searches and seizures."<sup>184</sup>

The United States and New York State Constitutions both prohibit warrantless searches. However, this rule does not extend to searches of cars where a police officer has probable cause for an arrest. Under the Federal and New York Constitution, courts have held that the search of a car and the seizure of drug paraphernalia within it are reasonable so long as the police officer has probable cause.

## SUPREME COURT, APPELLATE DIVISION

### FIRST DEPARTMENT

People v. Laws<sup>185</sup>  
(decided February 28, 1995)

The People brought this action to appeal the grant by the Supreme Court, Bronx County, of a motion to suppress physical evidence and statements made by the defendant.<sup>186</sup> The People alleged that, under both the United States<sup>187</sup> and New York State

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183. *Yancy*, 86 N.Y.2d at 246, 654 N.E.2d at 1236, 630 N.Y.S.2d at 988.

184. *Id.*

185. 208 A.D.2d 317, 623 N.Y.S.2d 216 (1st Dep't 1995).

186. *Id.* at 319, 623 N.Y.S.2d at 216-17.

187. U.S. CONST. amend. IV. The Fourth Amendment states 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 . . ." *Id.*