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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.[183] 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."[184]

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[185]
(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.[186] The People alleged that, under both the United States[187] and New York State

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.*

Constitutions,[188] the trial court erred in holding (1) that the defendant had standing to contest the warrantless search and seizure;[189] (2) that the discovery of a gun was the fruit of an illegal detention;[190] and (3) that the statements made by the defendant were also fruits of the same illegal detention.[191]

The Appellate Division, First Department, held that the defendant did not have a legitimate expectation of privacy when he placed an object in the back seat of the automobile;[192] that the police search of the vehicle was valid even though the defendant was being illegally detained at the time of the search;[193] and that the inculpatory statement made by the defendant while he was being illegally detained was required to be suppressed.[194] Accordingly, the appellate division modified the lower court's holding by reversing the grant of the defendant's motion to suppress the physical evidence and affirmed the exclusion of statements.[195]

On June 3, 1992, Police Officers Byrne and Gallo "were driving southbound on Third Avenue in the Bronx in an unmarked police car . . . when they observed a four-door Sunbird sedan with Connecticut plates double parked on the northbound side of the street."[196] While the defendant was standing by the open rear passenger side door, Officer Byrne saw him "remove something from his waistband, lean over and place

188. *Id.* N.Y. CONST. art. I, § 12. Article I, section 12 provides in pertinent part that: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . ." *Id.*

189. *Laws*, 208 A.D.2d at 320, 623 N.Y.S.2d at 217.

190. *Id.* at 322, 623 N.Y.S.2d at 219.

191. *Id.* at 323, 623 N.Y.S.2d at 219.

192. *Id.* at 321, 623 N.Y.S.2d at 218.

193. *Id.* at 322, 623 N.Y.S.2d at 218-19.

194. *Id.* at 323, 623 N.Y.S.2d at 219.

195. *Id.*

196. *Id.* at 319, 623 N.Y.S.2d at 217.

it in the rear passenger compartment."[197] Officer Byrne made a U-turn and noticed two female occupants in the front seat after he pulled up behind the car.[198] As the police stopped and got out of their vehicle, the defendant shut the rear door and walked away from the car.[199]

The officers identified themselves to the defendant and while Officer Gallow detained him, Officer Byrne approached the car.[200] "On the floor of the rear compartment, he observed an empty shoe box and a .9mm semi-automatic handgun."[201] When Officer Byrne recovered the gun, the defendant admitted that it was his and he was placed under arrest.[202]

The trial court ordered the suppression of the gun and, without any discussion, also ordered the suppression of the defendant's statements.[203] In its decision to grant suppression, the court found that the defendant had standing to contest a search of "'the vehicle belonging to [his] partner.'"[204] More precisely, the court found that the defendant "could have been considered a licensee with standing to contest a search of a car to which he had access."[205] The court also found that the officers were not entitled to stop the defendant as a result of seeing him "reach into

197. *Id.* Officer Byrne could not identify the object. Instead, he relied "on his extensive experience" as an officer and "the defendant's movements" which lead him to believe it was a gun. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at 320, 623 N.Y.S.2d at 217. At first, the defendant said that he would "take the weight" for the gun. *Id.* The defendant admitted that he owned the gun after Officer Byrne explained to him that "if the gun was not his, he should not take the responsibility for it." *Id.*

203. *Id.*

204. *Id.* (citations omitted). The defendant called two witnesses. *Id.* Ms. Gallo, a Mr. Softee ice cream vendor and friend of the defendant, testified that she had occasionally worked with the defendant. *Id.* The other witness testified that the defendant was speaking to his brother on the sidewalk when the officers approached him. *Id.*

205. *Id.*

his waistband, bend over a car, close the door and walk away" and "that the officers acted on a mere hunch."[206]

The appellate division first addressed the People's claim that the defendant lacked standing to contest the warrentless search and seizure.[207] The People argued that the defendant did not possess an expectation of privacy in the car when he placed the gun in the rear passenger compartment and since he lacked the requisite expectation of privacy, he could not object to the seizure of the gun.[208]

The court began its analysis by noting that "[s]tanding to challenge a search on constitutional grounds is no longer, as was the holding of *Jones v. United States*,[209] automatic, arising merely . . . as a function of a person's legitimate presence in premises where a search occurs."[210] The United States Supreme Court has:

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206. *Id.*

207. *Id.* at 320, 623 N.Y.S.2d at 217.

208. *Id.* at 320-21, 623 N.Y.S.2d at 217-18.

209. 362 U.S. 257 (1960), *overruled by* United States v. Salvucci, 448 U.S. 83 (1980).

210. *Laws,* 208 A.D.2d at 321, 623 N.Y.S.2d at 218 (citing *Jones*, 362 U.S. at 267). In *Jones*, the United States Supreme Court expressed the nature of the interests protected by the Fourth Amendment in terms of privacy, noting that the Fourth Amendment was not limited to excluding unreliable or prejudicial evidence. *Jones*, 362 U.S. at 261. "[I]t is entirely proper to require of one who seeks to challenge the legality of a search [to] establish that he himself was the victim of an invasion of privacy." *Id. See also* Rakas v. Illinois, 439 U.S. 128, 143-44 (1978) (holding that persons who fail to show a legitimate expectation of privacy in an area searched or property seized, or have not demonstrated either a property or possessory interest in the same area searched or property seized, do not have standing to challenge the search); People v. Rodriguez, 69 N.Y.2d 159, 162, 505 N.E.2d 586, 588, 513 N.Y.S.2d 75, 77 (1987) (holding that when a defendant has no reasonable or constitutionally recognizable expectation of privacy, the defendant has no standing to seek suppression of evidence seized in a warrentless search). The *Laws* court also stated that the "right to be secure against unreasonable searches and seizures is a personal one." *Laws*, 208 A.D.2d at 321, 623 N.Y.S.2d at 218. *See* Alderman v. United States, 394 U.S. 165, 174 (1969) (holding that "Fourth Amendment rights are personal rights [that] may not be vicariously asserted"); People v. Ponder, 54 N.Y.2d 160, 429 N.E.2d 735, 445 N.Y.S.2d 57 (1981).

> defined the scope of the interest protected by the Fourth Amendment as a legitimate expectation of privacy, one that society is prepared to recognize as reasonable. In interpreting the New York State Constitution, the Court of Appeals has held . . . that New York provides no broader standing rule than that allowed under the federal constitutional standard.[211]

In *People v. Rodriquez*,[212] the New York Court of Appeals conducted an analysis concerning the invocation of the right to be secure against unreasonable searches and seizures. "Historically," the court noted, "to challenge the legality of a search, the defendant had to show some possessory or proprietary interest in the property seized or the area searched."[213] Some years later, the United States Supreme Court announced that anyone "legitimately on [the] premises has standing to challenge the legality of the search."[214] Finally, in *Rakas v. Illinois*,[215] the Court refined this analysis to make the "legitimate expectation of privacy" test the initial inquiry used to determine whether a defendant has standing to object to a search or seizure.[216] Thus, the proper inquiry into whether or not a person has a legitimate expectation of privacy "should consider such factors as whether the person took precautions to maintain privacy, the manner in which he or she used the premises and whether he or she had the

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211. *Laws*, 208 A.D.2d at 321, 623 N.Y.S.2d at 218. *See Rakas*, 439 U.S. at 143-44; *Rodriquez*, 69 N.Y.2d at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77. The *Rodriquez* court stated that the New York State Constitution was sufficient and that "there was no reason to apply a more generous standing rule than was allowed under the Federal constitutional standard." *Id.*

212. 69 N.Y.2d 159, 505 N.E.2d 586, 513 N.Y.S.2d 75 (1987).

213. *Id.* at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77. *See* Olmstead v. United States, 277 U.S. 438 (1928) (holding that information from the defendant's telephone conversations obtained through a wire tap did not constitute a search or seizure), *overruled by* Katz v. United States, 389 U.S. 347 (1967).

214. *Rodriquez*, 69 N.Y.2d at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77. *See* Jones v. United States, 362 U.S. 257, 267 (1960), *overruled by* United States v. Salvucci, 448 U.S. 83 (1980).

215. 439 U.S. 128 (1978).

216. *Rakas*, 439 U.S. at 143; *Rodriquez*, 69 N.Y.2d at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77.

right to exclude other persons from the premises or the property searched."[217]

Applying these principles, the appellate division determined that the defendant did not demonstrate a legitimate expectation of privacy in the car.[218] The court conducted a thorough analysis of the facts in reaching this decision. First and foremost, the court noted that the defendant was not the owner of the car.[219] The only evidence presented at trial which pointed to the defendant having any connection with the car was the testimony of a witness, Mrs. Gallo, who claimed that she and the defendant "were partners in [an] ice cream truck route."[220] The court, relying on *People v. Ortiz*[221] and *People v. Herrin*,[222] determined that such a business relationship would not, in and of itself, confer standing with respect to Ms. Gallo's car.[223] There was no evidence presented that the car was used for business purposes, nor was there an argument that the defendant had permission to use the car.[224] The court concluded that, since the

217. *Laws*, 208 A.D.2d at 321, 623 N.Y.S.2d at 218 (citing *Rodriquez*, 69 N.Y.2d at 162, 505 N.E.2d at 588, 513 N.Y.S.2d at 77).

218. *Laws*, 208 A.D.2d at 321, 623 N.Y.S.2d at 218.

219. *Id.*

220. *Id.*

221. 83 N.Y.2d 840, 633 N.E.2d 1104, 611 N.Y.S.2d 500 (1994). In *Ortiz*, the New York Court of Appeals held that the defendant did not have standing to challenge the entry into the apartment of his girlfriend without a warrant. *Id.* at 842, 633 N.E.2d at 1105, 611 N.Y.S.2d at 501. According to the court, a person may have an expectation of privacy in premises that are not his, e.g., an overnight guest or a familial or other substantial relationship recognized by society. *Id.* However, the court in *Ortiz* concluded that the defendant was just a casual visitor in his girlfriend's apartment and lacked any reasonable expectation of privacy in her apartment. *Id.* at 843, 633 N.E.2d at 1105, 611 N.Y.S.2d at 501.

222. 187 A.D.2d 670, 590 N.Y.S.2d 523 (2d Dep't 1992). In *Herrin*, the defendant, and an accomplice who lived in the same house as the defendant, were charged and convicted of robbery. *Id.* at 670, 590 N.Y.S.2d at 524. The appellate division concluded that the defendant had no reasonable expectation of privacy in either his accomplice's bedroom or the car used during the robberies and, therefore, lacked standing to object to the seizure of the items found. *Id.* at 671, 590 N.Y.S.2d at 524-25.

223. *Laws*, 208 A.D.2d at 321-22, 623 N.Y.S.2d at 218.

224. *Id.*

defendant failed to establish any connection between himself and the car in which the gun was discovered, he lacked standing to object to the seizure of the gun.[225]

The second claim made by the People was that the trial court erred in holding that the discovery of the gun was the fruit of an illegal detention.[226] The People argued, and the appellate division agreed, that the defendant was not entitled to suppression of the gun on the grounds that its recovery was not tainted by the brief detention of the defendant because its recovery was "derived from a source independent of the detention."[227]

The court determined that the gun was not the "fruit of an illegal detention."[228] The appellate division relied on *People v. Rogers*[229] and *People v. Pleasant*[230] in reaching this determination. In *Rogers*, the court of appeals held that:

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225. *Id.* at 322, 623 N.Y.S.2d at 218.

226. *Id.*

227. *Id.* The court stated that Officer Byrne's observation did not give rise to a reasonable suspicion that the defendant was engaged in criminal activity. *Id. See* People v. Hollman, 79 N.Y.2d 181, 184-85, 590 N.E.2d 204, 205-06, 581 N.Y.S.2d 619, 620-21 (1992). The New York Court of Appeals in *Hollman* relied on People v. DeBour, 40 N.Y.2d 210, 352 N.E.2d 562, 386 N.Y.S.2d 375 (1976), where the court set out "a four-tiered method for evaluating the propriety of encounters initiated by police officers in their criminal law enforcement capacity." *Hollman*, 79 N.Y.2d at 184, 590 N.E.2d at 205, 581 N.Y.S.2d at 620. The court stated that:

> If a police officer seeks simply to request information from an individual, that request must be supported by an objective, credible reason, not necessarily indicative of criminal activity. The common-law right of inquiry, a wholly separate level of contact, is "activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion." Where a police officer has reasonable suspicion that a particular person was involved in a felony or misdemeanor, the officer is authorized to forcibly stop and detain that person.

Id. at 184-85, 590 N.E.2d at 205-06, 581 N.Y.S.2d at 620-21 (citing *De Bour*, 40 N.Y.2d at 223, 352 N.E.2d at 571-72, 386 N.Y.S.2d at 384-85).

228. *Laws,* 208 A.D.2d at 322, 623 N.Y.S.2d at 218.

229. 52 N.Y.2d 527, 421 N.E.2d 491, 439 N.Y.S.2d 96, *cert. denied*, 454 U.S. 898 (1981).

230. 76 A.D.2d 244, 430 N.Y.S.2d 592 (1st Dep't 1980), *cert. denied*, 455 U.S. 924 (1982). The court in *Pleasant* stated that it is clear that not:

> the exclusionary rule is not automatic, and will not be applied if the impact of the illegal arrest does not closely touch upon the challenged evidence . . . . [A]t some point the chain of causation leading from the illegal activity to the challenged evidence may become so attenuated that the 'taint' of the original illegality is removed.[231]

"The stop of the defendant in no way aided Officer Byrne in either the discovery or the recovery of the gun."[232] Nor did the defendant provide the officers with any information that led to the whereabouts of the gun.[233] The court stated that the brief detention of the defendant was "intended merely to hold him 'and not to provide the police with an opportunity to discover evidence which was not otherwise available.'"[234]

Furthermore, the court noted that "the gun's recovery was the product of the plain view doctrine."[235] As the New York Court of Appeals pointed out in *People v. Diaz*:[236]

> all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether . . . the evidence to which instant objection is made has been come at by . . . means sufficiently distinguishable to be purged of the primary taint.

Id. at 246, 430 N.Y.S.2d at 593 (quoting Wong Sun v. United States, 371 U.S. 471, 487-88 (1963)).

231. *Rogers*, 52 N.Y.2d at 532-33, 421 N.E.2d at 493, 439 N.Y.S.2d at 98 (citations omitted).

> Situations in which the detrimental impact of the illegal actions by the police [become so removed as to no longer justify the suppression of the evidence] have been commonly grouped by the United States Supreme Court [into separate categories. One of the categories is] where the evidence challenged is *the product of a source independent of the defendant's detention* . . . .

Id. (citing Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920) (emphasis added)).

232. *Laws*, 208 A.D.2d at 322, 623 N.Y.S.2d at 219. According to the court, the gun would have been discovered even if the defendant had not been detained because it was observed on the floor of the rear passenger compartment by Officer Byrne when he walked over to the car. *Id.*

233. *Id.*

234. *Id.* (citation omitted).

235. *Id.*

236. 81 N.Y.2d 106, 612 N.E.2d 298, 595 N.Y.S.2d 940 (1993).

> under the plain view doctrine, if the sight of an object gives the police probable cause to believe that it is the instrumentality of a crime, the object may be seized without a warrant if three conditions are met: "(1) the police are lawfully in a position from which the object can be viewed; (2) if the police have lawful access to the object [in question]; and (3) the objects incriminating nature is immediately apparent."[237]

As the record shows in *Laws*, Officer Byrne lawfully approached the car without entering it or even opening a door, looked through a window and in plain view, observed a gun on the floor of the rear passenger compartment.[238] "One has no legitimate expectation of privacy in locations in a car which are observable by passersby. Accordingly, an officer's simply peering inside an automobile does not constitute a search and the Fourth Amendment . . . does not limit this activity."[239] Officer Byrne could, by viewing the gun and given the exigency, i.e., its location in plain view inside the car, seize it without a

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237. *Id.* at 110, 612 N.E.2d at 301, 595 N.Y.S.2d at 943 (citation omitted). The *Diaz* court further stated that:

> The plain view doctrine, it must be emphasized, establishes an exception to the requirement of a warrant not to search for an item, but to *seize* it. Because the item is already in the open where it may be seen, the owner can have no expectation of privacy in its concealment and, thus, its viewing cannot be a search under Article I, § 12 [of the New York State Constitution] or the Fourth Amendment [of the United States Constitution.]

Id.

238. *Laws*, 208 A.D.2d at 323, 623 N.Y.S.2d at 219.

239. People v. Class, 63 N.Y.2d 491, 494-95, 472 N.E.2d 1009, 1011, 483 N.Y.S.2d 181, 183 (1984). *See also* People v. Manganaro, 176 A.D.2d 354, 574 N.Y.S.2d 587 (2d Dep't 1991). In *Manganaro*, the appellate division held that an officer's conduct in walking around a parked car and looking through one of its windows did not constitute a search for which justification was required. *Id.* at 355, 574 N.Y.S.2d at 588. The United States Supreme Court has held that a motorist in such a case has "no legitimate expectation of privacy in shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either an inquisitive passerby or diligent police officers." Texas v. Brown, 460 U.S. 730, 740 (1983) (quotations omitted).

warrant.[240] Thus, according to the court, the gun was improperly suppressed.[241]

The final claim made by the People was that the trial court erred in determining that the statements made by the defendant were also fruits of the same illegal detention.[242] In *Rogers*, the court noted that "it is generally recognized that statements derived from an illegal detention will be suppressed and cannot be used at trial."[243] In *People v. Hunt*,[244] the Appellate Division, Fourth Department, held that the

> [d]efendant's statements to the police flowed directly from the illegal arrest and it cannot be said that they were the product of a source that was independent of the detention or that the illegal activity was attenuated by some intervening event that justifies the conclusion that the evidence was not a result of the illegal arrest.[245]

The court in *Laws* determined that the defendant's statements that he would "take the weight for the gun" and that he "owned the gun" were made while he was being detained and while the gun was being recovered.[246] Following the rationale from *Hunt*, the *Laws* court concluded that "[s]ince it cannot not be said that the statements were 'the product of a source independent of the defendant's detention' or that the illegal detention was sufficiently attenuated so as to render the statements admissible, these statements must be suppressed as the fruit of the illegal detention."[247]

The federal and state courts have given law enforcement great latitude in order to effectively carry out their respective anti-crime goals. The United States and New York State Constitutions prescribe that a person is protected against unreasonable searches

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240. *Laws*, 208 A.D.2d at 323, 623 N.Y.S.2d at 219.
241. *Id.*
242. *Id.*
243. People v. Rogers, 52 N.Y.2d 527, 532, 421 N.E.2d 491, 493, 439 N.Y.S.2d 96, 98, *cert. denied*, 454 U.S. 898 (1981).
244. 155 A.D.2d 957, 547 N.Y.S.2d 968 (4th Dep't 1989).
245. *Id.* at 959, 547 N.Y.S.2d at 969.
246. *Laws*, 208 A.D.2d at 323, 623 N.Y.S.2d at 219.
247. *Id.* (citations omitted).

and seizures. However, under both the Federal and New York State constitutions, "when a defendant has no reasonable or constitutionally recognizable expectation of privacy, he has no standing to seek suppression of evidence seized in a warrentless search."[248] Additionally, the plain view doctrine, under both the Federal and New York State Constitutions, permits the seizure of an object if that object is viewed in plain sight from a lawful vantage point, it is immediately apparent that the object is of an incriminating nature, and the law enforcement official has some lawful basis for being in a position in which it can be seized.[249] Finally, under both the Federal and New York State Constitutions, "it is generally recognized that statements derived from an illegal detention will be suppressed and cannot be used at trial"[250] unless it is shown that the statements were the "product of a source that [was] independent of [the] detention or . . . sufficiently attenuated so as to render the statements admissible."[251]

248. People v. Rodriguez, 69 N.Y.2d 159, 161, 505 N.E.2d 586, 588, 513 N.Y.S.2d 75, 77 (1987).

249. People v. Diaz, 81 N.Y.2d 106, 110, 612 N.E.2d 298, 301, 595 N.Y.S.2d 940, 943 (1993).

250. People v. Rogers, 52 N.Y.2d 527, 532, 421 N.E.2d 491, 493, 439 N.Y.S.2d 96, 98, *cert. denied*, 454 U.S. 898 (1981) (citations omitted).

251. *Laws*, 208 A.D.2d at 323, 623 N.Y.S.2d at 219.