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Volume 19

Number 2 *New York State Constitutional Decisions:*  
*2002 Compilation*

Article 16

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April 2015

# Appellate Division, Third Department, Landsman v. Village of Hancock

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## Recommended Citation

Orellana, Joaquin (2015) "Appellate Division, Third Department, Landsman v. Village of Hancock," *Touro Law Review*: Vol. 19: No. 2, Article 16.

Available at: <http://digitalcommons.tourolaw.edu/lawreview/vol19/iss2/16>

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Appellate Division, Third Department, Landsman v. Village of Hancock

**Cover Page Footnote**

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**SUPREME COURT, APPELLATE DIVISION  
THIRD DEPARTMENT**

**Landsman v. Village of Hancock<sup>1</sup>  
(decided July 18, 2002)**

Jonathan Landsman filed a lawsuit against two police officers of the Village of Hancock, as a result of an encounter with those officers.<sup>2</sup> Landsman filed suit for common-law assault, false imprisonment, state due process and equal protection violations, a 42 U.S.C. Section 1983<sup>3</sup> violation, and an unreasonable seizure pursuant to both the Federal<sup>4</sup> and New York<sup>5</sup> Constitutions.<sup>6</sup> In May 2000, Landsman moved for partial summary judgment on the unreasonable seizure and federal civil rights issues, however, the court denied that motion.<sup>7</sup> Thereafter, the court bifurcated the trial and severed the federal claim from the state law claims.<sup>8</sup> The jury found the officers did not falsely imprison Landsman and that they did not seize him. Therefore, the judge dismissed Landsman's entire complaint and awarded costs to the defendants.<sup>9</sup> Landsman then moved for judgment as a matter of law on his New York

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<sup>1</sup> 296 A.D.2d 728, 745 N.Y.S.2d 258 (3d Dep't 2002).

<sup>2</sup> *Id.* at 730, 745 N.Y.S.2d at 261.

<sup>3</sup> 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

<sup>4</sup> U.S. CONST. amend. IV provides in pertinent 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 . . . ."

<sup>5</sup> NY CONST. art. I, § 12 provides in pertinent 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 . . . ."

<sup>6</sup> *Landsman*, 296 A.D.2d at 730, 745 N.Y.S.2d at 261.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Constitution unlawful seizure claim.<sup>10</sup> The court denied the motion and Landsman subsequently appealed.<sup>11</sup>

The facts of this case are disputed. According to Landsman, he was walking south on Read Street at approximately 10:45 p.m. on January 3, 1998, when “a Village of Hancock police car blocked his path.”<sup>12</sup> Landsman said he then “turned right and walked west on East Front Street, but then changed his mind and turned left, jaywalking across the street to the south side, where there is no sidewalk, turned left and walked east on East Front Street.”<sup>13</sup> He walked by the side of the police car, and the officer on the passenger side “asked him, if he was all right.”<sup>14</sup> After responding affirmatively, Landsman continued to walk when the police car pulled up beside him and the officer questioned him “in a very nasty tone.”<sup>15</sup> The officer asked Landsman if he resided in the vicinity, and he answered by stating that he owned “property in the locality.”<sup>16</sup> Landsman ignored the officers’ demand for identification and order to approach the vehicle, and continued to walking.<sup>17</sup> The police car accelerated, stopped in front Landsman and Officer Resti exited the car and prevented Landsman from walking further.<sup>18</sup> Officer Resti asked Landsman for identification while Officer Picozzi tried to exit the vehicle.<sup>19</sup> The officer held up his hand and signaled to the plaintiff to stop.<sup>20</sup> The plaintiff identified himself as an attorney but was unwilling to reveal his identity.<sup>21</sup> Landsman “told the officer that the Court of Appeals had ruled that he did not have to do so.”<sup>22</sup> Landsman “asked twice if he was free to go, but the first request was simply answered by another demand that he identify himself, and the second request

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<sup>10</sup> *Id.* at 733, 745 N.Y.S.2d at 264.

<sup>11</sup> *Landsman*, 296 A.D.2d at 733, 745 N.Y.S.2d at 264.

<sup>12</sup> *Id.* at 728, 745 N.Y.S.2d at 260.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Landsman*, 296 A.D.2d at 729, 745 N.Y.S.2d at 260.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 729, 745 N.Y.S.2d at 261.

<sup>21</sup> *Landsman*, 296 A.D.2d at 729, 745 N.Y.S.2d at 261.

<sup>22</sup> *Id.*

was met with silence.”<sup>23</sup> Landsman requested and received the officers’ names and provided the officers with “his name and date of birth.”<sup>24</sup>

According to the officers, they were stationed in the grocery store parking lot and noticed Landsman making abrupt turns while crossing the road.<sup>25</sup> The officers claimed they were concerned for plaintiff’s safety and approached him to determine if he was all right.<sup>26</sup> However, Landsman failed to respond.<sup>27</sup> According to Officer Picozzi, Landsman was “intoxicated or on some type of drug [and] disoriented.”<sup>28</sup> The officers attempted to question Landsman a second time, however he failed to respond.<sup>29</sup> The officers pulled their vehicle over as Officer Resti exited the vehicle and approached Landsman.<sup>30</sup> Officer Picozzi testified that he remained in the car and denied “holding up his hand to signal plaintiff to stop.”<sup>31</sup> Picozzi also testified that he advised Landsman that he was “free to leave at any time.”<sup>32</sup> All parties agreed that once plaintiff provided his name and date of birth, the officers conducted a routine computer check to insure that plaintiff was not reported as missing and was not wanted by any law enforcement agency.<sup>33</sup> The confrontation ended when plaintiff refused to shake Officer Resti’s extended hand.<sup>34</sup>

Landsman appealed the trial court’s decision, arguing that the court erred in dismissing his federal claim because the jury did not even decide his federal claim.<sup>35</sup> The plaintiff argued that the federal constitutional standard of what constitutes a seizure is broader than that provided by the New York Constitution.<sup>36</sup> Accordingly, he argued, one could be seized under the Federal

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 729, 745 N.Y.S.2d at 260.

<sup>26</sup> *Landsman*, 296 A.D.2d at 729, 745 N.Y.S.2d at 260.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 729, 745 N.Y.S.2d at 261.

<sup>30</sup> *Id.*

<sup>31</sup> *Landsman*, 296 A.D.2d at 729, 745 N.Y.S.2d at 261.

<sup>32</sup> *Id.* at 730, 745 N.Y.S.2d at 261.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 732, 745 N.Y.S.2d at 263.

<sup>36</sup> *Landsman*, 296 A.D.2d at 732, 745 N.Y.S.2d at 263.

Constitution but not under the New York Constitution.<sup>37</sup> The Third Department agreed with the lower court that plaintiff was not seized by the village police officers within the meaning of the New York Constitution, and that meant he was not seized under the Federal Constitution's narrower definition of seizure.<sup>38</sup> The court reasoned that the New York State Constitution has a more expansive meaning of seizure, thereby providing greater rights to individuals than the "minimal standards" provided by the Federal Constitution.<sup>39</sup> Therefore, the dismissal of Landsman's federal claim was proper because he was collaterally estopped from pursuing his federal claim.<sup>40</sup>

The Landsman court first turned to *People v. Bora*,<sup>41</sup> in determining what constitutes a seizure within the meaning of the New York Constitution.<sup>42</sup> The New York Court of Appeals in *Bora* held that physical restraint or submission to authority was not required to establish a seizure.<sup>43</sup> In *Bora*, police officers were responding to a radio report of alleged drug activity when they came across the defendant, who fit the description of the alleged perpetrator.<sup>44</sup> An officer exited the police car and demanded that the defendant "stop" as the defendant began to walk away.<sup>45</sup> The defendant ran, and threw a brown paper bag, containing crack cocaine, on the floor.<sup>46</sup> The officers chased and arrested the defendant.<sup>47</sup> The defendant moved to suppress the crack cocaine evidence, but pleaded guilty after the trial court denied his motion.<sup>48</sup> Defendant's conviction was affirmed by the First Department and appealed to the New York Court of Appeals.<sup>49</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 733, 745 N.Y.S.2d at 263-64.

<sup>40</sup> *Id.*

<sup>41</sup> 83 N.Y.2d 531, 634 N.E.2d 168, 611 N.Y.S.2d 796 (1996).

<sup>42</sup> *Landsman*, 296 A.D.2d at 733, 745 N.Y.S.2d at 264.

<sup>43</sup> *Bora*, 83 N.Y.2d at 534, 634 N.E.2d at 170, 611 N.Y.S.2d at 798.

<sup>44</sup> *Id.* at 533, 634 N.E.2d at 169, 611 N.Y.S.2d at 797.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Bora*, 83 N.Y.2d at 533, 634 N.E.2d at 169, 611 N.Y.S.2d at 797.

<sup>49</sup> *Id.*

Under the New York Constitution, seizure may be established by showing that the police action resulted in a “significant interruption of the individual’s liberty of movement.”<sup>50</sup> In *Bora*, the court stated that the test was whether a reasonable person would believe, under the circumstances, that “the officer’s conduct was a significant limitation on his or her freedom.”<sup>51</sup> The court found that the officer’s conduct did not constitute a seizure within the meaning of the New York Constitution.<sup>52</sup> Therefore, the Court of Appeals affirmed defendant’s conviction.<sup>53</sup>

The Landsman court continued its analysis of what constitutes a seizure under the New York Constitution by citing to *People v. De Bour*,<sup>54</sup> which held that there must be a significant interruption of the individual’s liberty of movement to constitute a seizure.<sup>55</sup> While on patrol in a high-crime area in Brooklyn, two police officers noticed the defendant walking towards them on the same side of the street.<sup>56</sup> When the defendant was within thirty or forty feet, he turned and the officers followed.<sup>57</sup> When defendant came across the officers, one officer questioned the defendant as to what he was doing and asked for some identification.<sup>58</sup> The defendant stated he had no identification and the officer noticed “a slight waist-high bulge in the defendant’s jacket.”<sup>59</sup> The officer asked the defendant to open his jacket and he complied.<sup>60</sup> The officer discovered a pistol and arrested the defendant.<sup>61</sup> Upon the

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<sup>50</sup> *Id.* at 534, 634 N.E.2d at 170, 611 N.Y.S.2d at 798 (citing *People v. De Bour*, 40 N.Y.2d 210, 216, 352 N.E.2d 562, 567, 386 N.Y.S.2d 375, 380 (1976)).

<sup>51</sup> *Id.*; see also *People v. Hicks*, 68 N.Y.2d 234, 500 N.E.2d 861, 508 N.Y.S.2d 163 (1986) (stating the test of whether a reasonable person in defendant’s position would believe his liberty and privacy has been significantly intruded upon).

<sup>52</sup> *Bora*, 83 N.Y.2d at 536, 634 N.E.2d at 171, 611 N.Y.S.2d at 799.

<sup>53</sup> *Id.*

<sup>54</sup> 40 N.Y.2d 210, 352 N.E. 562, 386 N.Y.S.2d 375 (1976).

<sup>55</sup> *Landsman*, 296 A.D.2d at 733, 745 N.Y.S. at 264 (citing *De Bour*, 40 N.Y.2d at 216, 352 N.E.2d at 567, 386 N.Y.S.2d at 380).

<sup>56</sup> *De Bour*, 40 N.Y.2d at 213, 352 N.E.2d at 565, 386 N.Y.S.2d at 378.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *De Bour*, 40 N.Y.2d at 213, 352 N.E.2d at 565, 386 N.Y.S.2d at 378.

trial court's denial of defendant's motion to suppress the evidence, the defendant pleaded guilty and was convicted of possession of a weapon.<sup>62</sup> The Appellate Division affirmed, and an appeal to the Court of Appeals followed.<sup>63</sup>

The New York Court of Appeals stated that a significant interruption of an individual's liberty of movement constitutes a seizure under the New York Constitution.<sup>64</sup> Although not every encounter constitutes a seizure, a police officer must have some "articulable justification" to physically or constructively restrain an individual.<sup>65</sup> In *De Bour*, the court found that the police officers were justified in their brief inquiry of the defendant because he conspicuously crossed the street to avoid the officers in the middle of the night, and it was in a high crime area.<sup>66</sup> Because the defendant was only approached and questioned, there was no significant limitation of his liberty of movement, which constitutes a seizure.<sup>67</sup> Therefore, the Court of Appeals found the defendant was not seized under the New York Constitution, and accordingly, his conviction was affirmed.<sup>68</sup>

Finally, the *Landsman* court held that if an individual is not seized within the meaning of the New York Constitution, he could not be seized under the Federal Constitution.<sup>69</sup> The court reasoned that "the Federal Bill of Rights . . . establishes minimal standards for individual rights applicable throughout the Nation. The function of the comparable provisions of the State Constitution, if they are not to be considered purely redundant, is to supplement those rights to meet the needs and expectations of [New York] State."<sup>70</sup> The court discussed that seizure within the meaning of the New York Constitution is a more narrow definition than seizure

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 216, 352 N.E.2d at 567, 386 N.Y.S.2d at 380.

<sup>65</sup> *Id.* (citing *People v. Cantor*, 36 N.Y.2d 106, 111, 324 N.E.2d 872, 876, 365 N.Y.S.2d 509, 514 (1975)).

<sup>66</sup> *De Bour*, 40 N.Y.2d at 220, 352 N.E.2d at 570, 386 N.Y.S.2d at 383.

<sup>67</sup> *Id.* at 217, 352 N.E.2d at 568, 386 N.Y.S.2d at 380.

<sup>68</sup> *Id.* at 221, 352 N.E.2d at 571, 386 N.Y.S.2d at 384.

<sup>69</sup> *Landsman*, 296 A.D.2d at 733, 745 N.Y.S. at 264.

<sup>70</sup> *Id.*; see also *People v. Cloud Books*, 68 N.Y.2d 553, 557, 503 N.E.2d 492, 494, 510 N.Y.S.2d 844, 846 (1986).

under the Federal Constitution.<sup>71</sup> Accordingly, the plaintiff was collaterally estopped from litigating his federal claim, and dismissal of his entire claim was proper.<sup>72</sup>

The *Landsman* court began its analysis of what constitutes a seizure within the meaning of the Federal Constitution by looking to *California v. Hodari D.*<sup>73</sup> In that case, the United States Supreme Court held that seizure of an individual required either physical force or a submission to a show of authority in which a reasonable person would feel restrained.<sup>74</sup> In *Hodari D.*, while on patrol of a high-crime area in Oakland, plain-clothes police officers noticed a group of four or five young men around a car.<sup>75</sup> When the group noticed the officers, they scattered and ran in different directions.<sup>76</sup> Police officers chased the group and an officer tackled the defendant and arrested him.<sup>77</sup> During the chase, the defendant tossed a small item, which was later identified as crack cocaine.<sup>78</sup> The defendant argued the evidence obtained was the result of an illegal seizure and should be suppressed, however the trial court disagreed.<sup>79</sup> The California Court of Appeals reversed, and the U.S. Supreme Court granted certiorari.<sup>80</sup>

The court held that under the Fourth Amendment, there can only be a seizure if an individual is restrained by physical force or the individual submits to a show of authority.<sup>81</sup> There is no submission to a show of authority if the individual continues to flee.<sup>82</sup> Since *Hodari* tossed the crack cocaine while attempting to flee, the Court found that the defendant was not seized until he was tackled.<sup>83</sup> Therefore, the motion to suppress the crack cocaine was

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<sup>71</sup> *Landsman*, 296 A.D.2d at 733, 745 N.Y.S.2d at 264.

<sup>72</sup> *Id.*

<sup>73</sup> 499 U.S. 621 (1991).

<sup>74</sup> *Id.* at 626.

<sup>75</sup> *Id.* at 622.

<sup>76</sup> *Id.* at 623.

<sup>77</sup> *Id.*

<sup>78</sup> *Hodari D.*, 499 U.S. at 623.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 623.

<sup>81</sup> *Id.* at 626.

<sup>82</sup> *Id.*

<sup>83</sup> *Hodari D.*, 499 U.S. at 629.

properly denied, and the California Court of Appeals decision was reversed.<sup>84</sup>

Furthermore, the United States Supreme Court recently held, in *United States v. Drayton*, that the Fourth Amendment does not require police officers seeking to search passengers traveling on a bus to inform those passengers that they have a right to refuse the search.<sup>85</sup> In *Drayton*, the defendants were traveling on a bus from Florida to Michigan, when the bus made a scheduled stop.<sup>86</sup> The search of the defendants resulted in narcotics being discovered.<sup>87</sup> The Supreme Court held that because the encounter was not confrontational, a reasonable person would not feel seized, and thus the officers did not have to advise the defendants they had a right to refuse the search.<sup>88</sup>

In conclusion, a seizure under the Federal Constitution occurs “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.”<sup>89</sup> Conversely, a seizure under the New York Constitution does not require that the “individual be physically restrained or submit to a show of authority.”<sup>90</sup> It is enough that the individual is exposed to a “mere significant limitation upon his or her liberty of movement.”<sup>91</sup> Therefore, a seizure can be unreasonable under the New York Constitution while that very same conduct may be reasonable under the Federal Constitution.

*Joaquin Orellana*

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<sup>84</sup> *Id.*

<sup>85</sup> *United States v. Drayton*, 536 U.S. 194 (2002).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 625 citing *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

<sup>90</sup> *Bora*, 83 N.Y.2d at 534, 634 N.E.2d at 170, 611 N.Y.S.2d at 798.

<sup>91</sup> *De Bour*, at 216, 352 N.E.2d at 567, 386 N.Y.S.2d at 380.