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Locked Glove Compartments: Searchable or Stash Spots?

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LOCKED GLOVE COMPARTMENTS: SEARCHABLE OR STASH SPOTS?

SUPREME COURT OF NEW YORK APPELLATE DIVISION, FIRST DEPARTMENT

People v. McFarlane[1]
(decided March 13, 2012)

I. INTRODUCTION

It is imperative that law enforcement officers are cognizant of and act within the bounds of their authority when stopping a vehicle as a result of a minor traffic violation. Courts at both the federal and state levels are inundated with constitutional challenges related to searches and seizures occurring subsequent to lawful traffic stops. Although such a stop is generally lawful at its inception, issues arise regarding the officer's conduct and the procedures employed thereafter. Specifically, where an officer uncovers contraband or other evidence of a crime, providing cause for arrest and criminal charges, the defense will challenge whether and to what extent the officer was authorized to search. The defense makes these challenges in an effort to persuade the court to suppress evidence supporting the charges, reducing the likelihood of a criminal conviction.

However, where the circumstances are suspect or the officer has knowledge that a crime has been or is about to occur, the prosecution may effectively argue that the warrantless search was permissible. The United States Supreme Court and New York State courts alike, observe several legal justifications, which when applicable, will excuse the Fourth Amendment requirement that a search be executed with a warrant and supported by probable cause. While courts have adopted exceptions to the Warrant Clause in light of the needs of an ever-changing society, one exception with deep historical roots is consent to search.[2] However, a warrantless search executed with

[1] 939 N.Y.S.2d 460 (App. Div. 1st Dep't 2012).

[2] *See, e.g.*, Schneckloth v. Bustamonte, 412 U.S. 218, 223 (1973) (seeking to resolve the

consent requires a showing that consent was voluntary and "[v]oluntariness is a question of fact to be determined from all the circumstances."[3] Voluntariness was not problematic in *People v. McFarlane*,[4] rather the scope of the consent provided was at issue.

The court in *McFarlane* sought to resolve whether defendant's consent gave the officer permission to search a locked glove compartment in a motor vehicle.[5] The court made two inquiries before making its ruling—first analyzing the scope of defendant's general consent, and next assessing whether the officer's entry into the vehicle for the purpose of opening the locked glove compartment made the search overly intrusive and beyond the scope of the consent.[6]

The contents discovered in the search resulted in defendant's arrest and arraignment.[7] At trial, defense counsel moved to suppress the loaded handgun the officer retrieved from the locked glove compartment.[8] Upon "finding that defendant did not consent to a search of the car's locked glove compartment," the lower court granted the motion.[9] Despite noting that the officer lawfully requested to search and defendant voluntarily consented, the court found that defendant only consented to a limited search, which did not include consent to open and search the locked glove compartment.[10] The court stated that neither the officer's statements, nor actions were sufficient to give a reasonable person in defendant's position reason to believe the officer was seeking permission to open the locked glove compartment.[11] Thus, notwithstanding the discovery of illegal contraband, the court upheld defendant's privacy rights in the contents of the

"square conflict of views between the state and federal courts" with regard to the prosecution's burden "to demonstrate that a consent was 'voluntarily' given."). In *Schneckloth*, the Court held that "when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied." *Id.* at 248.

[3] *Id.* at 248-49 (noting that "while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.").

[4] 939 N.Y.S.2d 460 (App. Div. 1st Dep't 2012).

[5] *Id.* at 461.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *McFarlane*, 939 N.Y.S.2d at 461.

[10] *Id.*

[11] *Id.*

glove compartment, creating a safe haven for drivers to conceal weapons and/or other contraband in locked compartments.

II. FACTUAL BACKGROUND

In the course of a lawful traffic stop, a police officer observed troubling items in plain view within defendant's vehicle.[12] These items included "a large wad of rolled up cash, a partly empty liquor bottle, and crushed up papers."[13] The officer inquired with defendant about these observations, and in turn, defendant's brief and blunt answers raised further suspicion.[14] In light of the circumstances, the officer perceived illegal activity was afoot and the possible presence of contraband.[15] The officer then "asked defendant if there was anything in the vehicle that he should know about."[16] After defendant replied that there was not, the officer sought permission to "take a look" inside the vehicle to confirm whether his suspicions were warranted.[17] Defendant replied, "[g]o ahead."[18] The officer checked around the "seats and center console," and then, without objection, removed the keys from the ignition to unlock and open the glove compartment.[19] Inside the glove compartment, the officer discovered a loaded gun.[20]

At trial, defense counsel moved to suppress the gun, arguing that the scope of the search was overly invasive and violated defendant's reasonable expectation of privacy.[21] Arguably, however, based on the officer observing items in plain view prior to requesting and receiving consent to search, a reasonable person should have realized the officer intended to inspect areas and enclosures that were not within his viewpoint from outside the vehicle.[22]

The court began by explaining that the People bear the burden to show that consent was voluntary, as voluntariness is a condition

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[12] *Id.*
[13] *Id.*
[14] *McFarlane*, 939 N.Y.S.2d at 461.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *McFarlane*, 939 N.Y.S.2d at 461.
[20] *Id.*
[21] *Id.*
[22] *Id.* at 462 (Saxe, J., dissenting).

precedent to finding valid consent.[23] However, defense counsel did not argue that consent was involuntary, but argued the search exceeded the scope of the consent.[24] Turning to the legal standard "for measuring the scope of a suspect's consent under the Fourth Amendment," the court noted that it was one "of objective reasonableness."[25] A court decides whether the search was executed consistent with or in violation of constitutional mandates by inquiring as to what "the typical reasonable person [would] have understood by the exchange between the officer and the suspect."[26]

In applying an objective standard, the court relied upon *Florida v. Jimeno*.[27] In *Jimeno*, the respondent challenged that an officer violated his Fourth Amendment rights in the context of a vehicular search.[28] The facts in *Jimeno* resembled those in *McFarlane*.[29] After Officer Trujillo "observed respondent make a right turn at a red light without stopping," he pulled the respondent over "to issue him a traffic citation."[30] Based upon earlier observations, specifically, Officer Trujillo "overheard respondent . . . arranging what appeared to be a drug transaction over a public telephone," he told the respondent that he suspected there were narcotics in his vehicle and requested his consent to search.[31] The respondent "stated that he had nothing to hide and gave [Officer] Trujillo permission to search the automobile."[32] In his search, Officer Trujillo found a "folded, brown paper bag on the floorboard . . . [and] a kilogram of cocaine inside."[33]

Upon defense counsel's motion, the trial court suppressed the

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[23] *Id.* at 461 (majority opinion) (citing People v. Whitehurst, 254 N.E.2d 905, 906 (1969)).

[24] *McFarlane*, 939 N.Y.S.2d at 461 (observing that the court's analysis primarily focused on the scope of the search that defendant, acting as a reasonable person under the circumstances, would have believed he consented to, specifically, what areas within the vehicle, it was reasonable to believe that his consent gave the officer permission to search).

[25] *Id.* at 461 (citing Florida v. Jimeno 500 U.S. 248, 251 (1991) (internal quotation marks omitted)).

[26] *Id.*

[27] *Id.* (citing *Jimeno*, 500 U.S. at 251).

[28] *Jimeno*, 500 U.S. at 249.

[29] *Compare McFarlane*, 939 N.Y.S.2d at 461 (noting that defendant consented to the officer's search of his vehicle, but defense counsel argued that the locked glove compartment was not within the consent given), *with Jimeno*, 500 U.S. at 249-50 (noting that the defendant likewise gave the officer permission to search his vehicle, but defense counsel posited that closed containers in the car were beyond the scope of the consent).

[30] *Jimeno*, 500 U.S. at 249.

[31] *Id.*

[32] *Id.* at 249-50.

[33] *Id.* at 250.

cocaine "on the ground that [respondent's] consent to search the car did not extend to the closed paper bag inside the car."[34] The decision was affirmed on appeal.[35] Yet, the Supreme Court granted certiorari to resolve the question of whether "closed containers found inside the vehicle" fall within the scope of a consensual vehicular search.[36] Answering this question in the affirmative, the Court overturned the trial court's ruling, reiterating two important principles in its opinion.[37]

First, observing "[t]he touchstone of the Fourth Amendment is reasonableness,"[38] the Court stated that "it is no doubt reasonable for the police to conduct a search once they have been permitted to do so."[39] Second, the Court stated that "[t]he scope of a search is generally defined by its expressed object."[40] In other words, assessing the scope of consent requires scrutiny of the officer, the suspect's language, and the overall exchange.[41] Since neither the officer nor suspect "place[d] any explicit limitation on the scope of the search," the Court found that upon receiving general consent to search, the police had authority to search objects or compartments within the vehicle, especially those likely to hold contraband.[42] The Court pointed to the officer's statement, "that he believed respondent was carrying narcotics" as putting a reasonable person on notice that his general consent would "include[] consent to search containers within that car which might bear drugs."[43] Further, "a reasonable person [is] expected to know that narcotics are generally carried in some form of container"[44] and not "strewn across the trunk or floor of a car."[45]

Considering the similar facts presented, had the court in *McFarlane* carefully looked at the legal principles in *Jimeno*, perhaps the majority of justices in *McFarlane* would have arrived at a differ-

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[34] *Id.*

[35] State v. Jimeno, 550 So. 2d 1176 (Fla. Dist. Ct. App. 1989), *aff'd*, 564 So. 2d 1083 (Fla. 1990), *rev'd*, 500 U.S. 248 (1991).

[36] *Jimeno*, 500 U.S. at 250.

[37] *Id.*

[38] *Id.* (citing Katz v. United States, 389 U.S. 347, 360 (1967)).

[39] *Id.* at 250-51 (citing *Schneckloth*, 412 U.S. at 219).

[40] *Id.* at 251 (citing United States v. Ross, 456 U.S. 798, 799 (1982)).

[41] *Jimeno*, 500 U.S. at 251.

[42] *Id.* (explaining that "[t]he authorization to search in this case . . . extended beyond the surfaces of the car's interior to the paper bag lying on the car's floor.").

[43] *Id.*

[44] *Id.*

[45] *Id.* (quoting *Ross*, 456 U.S. at 820).

ent conclusion. But rather, the court in *McFarlane* simply referenced the decision, adopted the objective standard and narrowly interpreted the holding. Emphasizing that the Court in *Jimeno* ruled upon the reasonableness of searching closed containers, as opposed to the search of a locked glove compartment, the court in *McFarlane* concluded that the officer's request to "take a look" or "check" the vehicular for contraband would not cause a reasonable person in defendant's position to believe he consented to a search of the glove compartment.[46] Rather, noting that "a locked container can only be opened by breaking into it or using a key," the court held that the locked glove compartment was beyond the scope of defendant's consent.[47] However, the court failed to consider the totality of circumstances of the officer and defendant's exchange, particularly, the officer's plain view observations that caused him to suspect there was contraband in the vehicle and defendant giving general consent without limiting the scope of his consent.[48] While a *closed* paper bag and *locked* glove compartment are different, the court in *McFarlane* ignored that both enclosures are capable of and may be used to conceal contraband.[49]

The court in *McFarlane* proposed that additional specific consent is needed for police to search a locked glove compartment.[50] The court stated that if the officer "asked [defendant] for the key or asked defendant to open [the glove compartment] himself, then a reasonable person may have perceived consent to search to include the

[46] *McFarlane*, 939 N.Y.S.2d at 461. The court stated that objectively, a reasonable person in defendant's position would perceive the officer's words as "a request to search the vehicle, possibly to include closed containers, but it did not reasonably imply a request for permission to open the locked glove compartment." *Id.*

[47] *Id.*

[48] *See, e.g.*, *Jimeno*, 500 U.S. at 251 (noting that absent "any explicit limitation on the scope of the search" and in light of the officer's expressed suspicions of narcotics being present in the vehicle, "it was objectively reasonably for the police to conclude that the general consent to search respondent's car included consent to search containers within that care which might bear drugs.").

[49] *McFarlane*, 939 N.Y.S.2d at 461 (observing that the Court in *Jimeno* relied on the fact that contraband is commonly concealed and not readily exposed in order to justify the officer's actions in opening the container found within the vehicle).

[50] *Compare id.* (requiring additional specific consent to search to justify the warrantless vehicular search), *with Jimeno*, 500 U.S. at 252 (observing that the Court wholly rejected the argument that additional, specific consent was required, concluding that there was "no basis [to] add[] this sort of superstructure to the Fourth Amendment's basic test of objective reasonableness").

glove compartment.[51] The only authority raised in support of this proposition was *People v. Gomez*,[52] in which the Court of Appeals held "it was unreasonable for the police officer to interpret defendant's general consent to search as consent to use a crowbar to damage the gas tank."[53] Yet, as posited by the Honorable Justice Saxe, dissenting in *McFarlane*, the majority's reliance on *Gomez* was misplaced, as unlocking the glove compartment caused absolutely no damage to the structural integrity of the vehicle.[54]

Justice Saxe objectively assessed the scope of defendant's general consent and observed that entering the vehicle, removing keys from the ignition, and unlocking the glove compartment was minimally intrusive.[55] Justice Saxe found defendant's consent, without verbal or implied limitations, made it reasonable to give the officer authority to search the glove compartment.[56] Further, Justice Saxe critiqued the majority for ignoring "the motion court's reasoning" in which it "concede[d] that the officer's request to 'take a look' into the car or 'check' it for contraband would have been reasonably understood to be a request to search the vehicle, including visible but closed containers."[57]

Justice Saxe proposed that defendant's general consent authorized the officer to search the interior of the vehicle, including its enclosures and compartments.[58] He found the officer's actions justified under the circumstances, as defendant could have, but made no objection to the officer reaching across him, removing keys, and opening the glove compartment.[59] Justice Saxe aligned the facts in *McFarlane* with those in *People v. Mitchell*,[60] analyzing the scope of general consent, and *People v. Mota*,[61] explaining the relevance of observations made prior to seeking consent to search, and further, re-

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[51] *McFarlane*, 939 N.Y.S.2d at 461 (noting that the officer in *McFarlane* "simply took the keys from the ignition and opened the glove compartment" without specifically requesting defendant's permission).

[52] 838 N.E.2d 1271 (N.Y. 2005).

[53] *Id.* at 1274.

[54] *McFarlane*, 939 N.Y.S.2d at 461-63 (Saxe, J., dissenting).

[55] *Id.* at 462.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *McFarlane*, 939 N.Y.S.2d at 462.

[60] 621 N.Y.S.2d 581 (App. Div. 1st Dep't 1995).

[61] No. 4698-01, 2003 WL 175306, at *1 (N.Y. Sup. Ct. Jan. 13, 2003).

jected the majority's reliance on *Gomez* as unpersuasive.[62]

In *People v. Mitchell*, a police officer lawfully stopped defendant because he was driving a vehicle with tinted windows.[63] Thereafter, the officer asked defendant whether "he could 'look through' the car."[64] The court found defendant's response, "you can look through anything you want," was valid consent to search.[65] This conclusion was based on three observations. First, in consenting to a search, defendant "placed no limitation whatsoever on the search of the automobile."[66] Likewise, defendant voiced no "objection while the arresting officer searched the back seat."[67] Moreover, the court explained, "the phrase to 'look through' the automobile can only be reasonably understood to request more than permission to conduct a visual inspection; it was clearly a request to search the car."[68]

Thus, Justice Saxe criticized the majority for distinguishing between the answers given by each of the respective defendants in *McFarlane* and in *Mitchell*.[69] Further, Justice Saxe noted that the scope of consent should not be based exclusively on the verbal exchange between a defendant and the police, but the totality of circumstances.[70] Justice Saxe argued, a reasonable person in defendant's position would perceive the officer's request to "look through" or "check" the car "as a viable request to search" areas not already visible, and defendant's "affirmative answer to that request would constitute a consent to [such] search."[71]

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[62] *McFarlane*, 939 N.Y.S.2d at 462-63.

[63] *Mitchell*, 621 N.Y.S.2d at 582.

[64] *Id.*

[65] *Id.*

[66] *Id.* McFarlane placed no limitation on his consent and, without a limit, the police officer conducted a search that he had routinely conducted in similar situations which, as evidenced by his testimony always included the glove compartment. *McFarlane*, 939 N.Y.S.2d at 462-63.

[67] *Mitchell*, 621 N.Y.S.2d at 582. Nothing in the *McFarlane* opinion suggests the defendant was not still in the vehicle at the time of the search of the glove compartment. *McFarlane*, 939 N.Y.S.2d at 462-63. There is also nothing in the record suggesting the defendant was not present to witness the officer's actions. *Id.* The defendant could have objected to the officer's actions at any time and instead chose to remain silent and voice no objection. *Id.*

[68] *Mitchell*, 621 N.Y.S.2d at 582.

[69] *McFarlane*, 939 N.Y.S.2d at 462 (noting that the *Mitchell* case was heard in the same court as *McFarlane* in 1995).

[70] *Id.* at 462-63.

[71] *Id.* at 462.

Moreover, relying on *People v. Mota*,[72] Justice Saxe demonstrated that implicit in a request to search is the reasonable understanding that the officer seeks to "inspect areas beyond that which could already been seen."[73] In *Mota*, police lawfully stopped defendant's car after observing excessively tinted windows, which violated Vehicle and Traffic Law, section 375(12-a)(b).[74] Upon request, defendant agreed to allow the officers to "look in the car."[75] Defendant admitted he understood the dialogue between himself and the officers was a request to search and that his answer was consent to search.[76] The police noticed "defects" in the airbag and "conclude[d] that the compartment had been modified."[77] The glove compartment, due to the modified airbag, was the focus of the search.[78] After observing "foam padding that [the police] knew did not belong there," one officer "took his knife and carefully pried open the air bag cover."[79] Using his flashlight to illuminate the contents located within the gap he had created, the officer discovered a handgun and ammunition.[80] The court held that "the search of the glove compartment and the air bag compartment were within the scope of the consent given."[81] The court explained that the existence of a hidden or altered compartment in a vehicle is a strong indication of criminal activity, and thus, such observation gave the police further legal justification, beyond that

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[72] No. 4698/01, 2003 WL 175306, at *1 (N.Y. Sup. Ct. Jan. 13, 2003).

[73] *Id.* at *5 ("Any reasonable person would have understood that with the interior of the car already illuminated and plainly visible, a count to 'look in' meant a '[consensual] search' of the vehicle's areas which were not already exposed to view.").

[74] *Id.* at *3; *see generally* N.Y. VEH. & TRAF. LAW § 5375 (McKinney 2012).

[75] *Mota*, 2003 WL 175306, at *3.

[76] *Id.* at *4 (noting the presence of a language barrier because the driver spoke Spanish).

[77] *Id.* at *2. The officer testified that while still outside the vehicle and prior to any questioning, he noticed the air bag had a crevice and was unusually clean, and based on his training he knew this required the air bag's cover removal at some point prior to this stop. *Id.*

[78] *Id.* at *2-*3 (noting that similar to a glove compartment, an airbag is a fixed, standard component to be found in all automobiles, and further, an airbag is protected by a casing which viewed broadly could be considered a lock). The search in *Mota* was similar to that which occurred in *McFarlane*, and neither a lock, nor a piece of plastic should make these types of compartments off limits to searches by police officers who have suspicion of illegal activity related to plain sight observances. *Compare McFarlane*, 939 N.Y.S.2d at 462-63 (observing, as noted in the dissent, that the officer's search did not impair the integrity of the vehicle), *with Mota*, 2003 WL 175306, at *2-*3 (observing that the officer altered the airbag compartment in the course of his search and his action in prying open the area in order to discover the contraband was overly intrusive).

[79] *Mota*, 2003 WL 175306, at *2.

[80] *Id.*

[81] *Id.* at *5.

which was initially provided by consent, to carry out the search.[82]

Relying on the rationale in *Mota*, Justice Saxe noted that the officer in *McFarlane* only requested consent to search the vehicle after he had observed "the large wad of rolled-up cash . . . and the liquor bottle and cups."[83] Thus, because of initial observations made *before* the officer requested permission to search, Justice Saxe argued that "[u]nder these circumstances, defendant could only understand the request to 'take a look' as a request to search for contraband inside closed containers in the car and places the police had not already been able to see."[84]

Further, Justice Saxe noted the officer's testimony at trial, stating that searching "under the seats, inside the [center] console, [and] the glove compartment" was his standard protocol when conducting a vehicular search.[85] This procedure supported Justice Saxe's position that the officer's conduct in carrying out the search pursuant to defendant's consent was objectively reasonable.[86] In fact, Judge Saxe posited that "a search of the interior of the car would have been incomplete without a search of the glove compartment."[87]

Finally, Justice Saxe addressed the issue of "whether the fact that the glove compartment was locked, would as a matter of law, alter the normal expectation [of privacy] that a consent to search the interior of a car would include the glove compartment."[88] Justice Saxe concluded that "merely encountering a lock [did not] negate the consent, requiring the police to seek additional permission before proceeding further with their search."[89] In support of this conclusion, Justice Saxe considered the facts presented and disposition of the

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[82] *McFarlane*, 939 N.Y.S.2d at 462 (noting that the court used a totality of the circumstances approach, finding that the consent the police obtained had encompassed the search of the altered airbag compartment and the glove compartment).

[83] *Mota*, 2003 WL 175306, at *6-*7.

[84] *McFarlane*, 939 N.Y.S.2d at 462. The police always have the ability to see what is in plain sight, whether it is during the day using natural light, or at night with flashlights. *Mota*, 2003 WL 175306, at *5. Thus, it logically follows that after being questioned about what an officer observed was already in plain sight, granting permission to search in these circumstances is a grant of specific consent to search that which is not visible in plain sight. *McFarlane*, 939 N.Y.S.2d at 462-63.

[85] *Id.*

[86] *Id.* at 463 (drawing this inference in light of the officer's testimony as to what is typically searched after being given consent to search a vehicle).

[87] *Id.* at 462-63.

[88] *Id.* at 463.

[89] *McFarlane*, 939 N.Y.S.2d at 463.

case in *Gomez*.[90]

In *Gomez,* the police stopped defendant because of excessively tinted windows.[91] One officer noticed a fresh coat of paint on the gas tank.[92] Upon obtaining consent to search, the officer "went to the rear seat, unlocked it and pulled it back . . . observed 'non-factory' carpet . . . pulled up the glued carpeting and discovered a cut in the floorboard."[93] "After struggling . . . [the officer] returned to his cruiser and retrieved a crowbar, which he used to pry open part of the gas tank," and then found "cocaine weighing approximately 1 ½ pounds."[94] The search was later challenged in court.[95] The court in *Gomez* held that general consent alone "cannot justify a search that impairs the structural integrity of a vehicle or that results in the vehicle being returned in a materially different manner than it was found."[96] Thus, because the ruling seemed to limit the scope of general consent, the majority in *McFarlane* relied on *Gomez* to support its conclusion that the search was overly intrusive and beyond the scope of the consented to search.[97]

However, as Justice Saxe observed, the majority's reliance on *Gomez* was misplaced.[98] The facts in *Gomez* were entirely distinguishable from those presented in *McFarlane*.[99] The court in *Gomez* merely found that defendant's general consent to search did not authorize police to use a crowbar and impair the integrity of a vehicle,[100] as such extreme conduct would rarely pass constitutional muster in terms of its reasonableness. Justice Saxe emphasized that the officer in *McFarlane* was not forceful and did no damage to the vehicle.[101] Therefore, Justice Saxe concluded, after defendant consented to allow the officer to conduct a search, "there [was] nothing unrea-

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[90] *Gomez*, 838 N.E.2d 1271.

[91] *Id.* at 1272.

[92] *Id.* (noting that this observation put the police on notice that the gas tank could have been altered for the purpose of storing contraband).

[93] *Id.*

[94] *Id.*

[95] *Gomez*, 838 N.E.2d at 1272.

[96] *Id.* at 1273.

[97] *McFarlane*, 939 N.Y.S.2d at 461.

[98] *Id.* at 463 (Saxe, J., dissenting) (noting that the Court in *Gomez* "merely held, unremarkably, that the defendant's general consent to search his car did not authorize the police to impair the structural integrity of the car").

[99] *Id.*

[100] *Id.*

[101] *Id.*

sonable . . . upon finding the glove compartment locked, reaching over to the key in the ignition, removing it and using it to unlock the glove compartment."[102]

Moreover, Justice Saxe acknowledged the logical reasoning behind Justice Read's dissent in *Gomez*, noting that defendant was aware the police were looking for narcotics, and thus, the officers were seeking consent to search compartments where narcotics are generally stored.[103] Given the increased sophistication of drug dealers and smugglers in a modern society and their innovative ideas and "efforts to hide contraband," Justice Read expressed that it is reasonable for the police to construe consent to search as inclusive of consent to search hidden compartments now created in vehicles.[104]

This case note presents an analysis of both state and federal law, consistent with Justice Saxe's dissenting opinion, suggesting that glove compartments should fall within the scope of a consensual search. It posits that the mere presence of a lock should not create a barrier, making the enclosure behind the lock off limits. Rather, the police should be given some leeway to open locks, especially by key, as in *McFarlane*, which was minimally intrusive and reasonable under the circumstances. Historically, courts have struggled to balance Fourth Amendment privacy rights and governmental interests. While interpreted with minor variance at the state and federal level, the search and seizure clauses of the United States Constitution and that of the New York State Constitution operate with a caveat—each prohibits and protects the right of citizens to be free from *unreasonable* searches and seizures.

Moreover, the expectation of privacy maintained in an automobile is not the same as that received in an immobile place, specifically in a place of residence.[105] Rather, in light of the risk that unde-

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[102] *McFarlane*, 939 N.Y.S.2d at 463. In fact, Judge Saxe remarked that such "action is exactly what is reasonably to be expected" under that set of circumstances. *Id.*

[103] *Gomez*, 838 N.E.2d at 1274-78 (Read, J., dissenting).

[104] *Id.* Justice Read dissented in *Gomez*, suggesting that the officers should be able to search hidden compartments. *Id.* (noting that the legal justifications set forth in the dissenting opinion were consistent with those raised by Justice Saxe in *McFarlane*, especially considering that a glove compartment is not even a hidden compartment, but one readily in plain view as part of the interior of a vehicle).

[105] *Compare* Cardwell v. Lewis, 417 U.S. 583, 589 (1974) ("One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view."), *with* Kyllo v. United States, 533 U.S. 27, 37 ("In the home, our cases show,

tected criminal activity on the roads presents to the public at large, in addition to the flight risk in the course of an investigation, drivers have a reduced expectation of privacy in the context of a vehicular search.[106] Also, due to their mobility, it is not practical for the police to stop a car, get a warrant application to a magistrate, and await its approval to search.[107] Thus, exceptions to the Warrant Clause, such as consent to search, play a role in deciding upon the reasonableness of a warrantless search.[108]

When a police officer requests permission to search, most courts will construe affirmative answers such as: "yes," "go ahead," or "sure," to constitute consent.[109] However, when consenting to a search, suspects have a right to expressly limit the search.[110] Notably, in *McFarlane*, defendant placed no such limitations, neither objected to, nor attempted to stop the officer from removing the keys from the ignition and unlocking the glove compartment. The majority in *McFarlane* proposed that specific consent is needed to open a locked compartment. In doing so, the court's ruling was pro-defendant, as the balance tipped in favor of defendant's privacy, which outweighed the government's interest in detecting and preventing crime.

The ramifications of the holding in *McFarlane* cannot be ignored—as the court created the illusion that a locked glove compartment is a vehicular safe house in which criminals can safely carry and conceal their contraband.

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all details are intimate details, because the entire area is held safe from prying government eyes.") (emphasis in original).

[106] *See, e.g.*, South Dakota v. Opperman, 428 U.S. 364, 367 (noting that "less rigorous warrant requirements govern [vehicular searches] because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.").

[107] *Id.* (observing that "automobiles create[] circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.").

[108] United States v. Mendenhall, 446 U.S. 544, 557 (1980) ("The question of whether . . . consent . . . was in fact voluntary or was the product of duress or coercion, express or implied, is to be determined by the totality of the circumstances,").

[109] *See, e.g.*, United States v. Drayton, 536 U.S. 194, 207 (2002) ("Police officers act in full accord with the law when they ask citizens for consent. It reinforces the rule of law for the citizen to advise the police of his or her wishes and for the police to act in reliance on that understanding. When this exchange takes place, it dispels inferences of coercion.").

[110] *See, e.g.*, *Jimeno*, 500 U.S. at 249 (observing that the Court found the respondent's general consent to include closed containers capable of concealing the object of the search, emphasizing the fact that the respondent gave the officer "permission to search his car, and did not place any explicit limitation on the scope of the search").

III. THE FEDERAL APPROACH

The Fourth Amendment protects the American people from being subject to "unreasonable search and seizures."[111] Thus, the United States Supreme Court created the "exclusionary rule, [as] a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation."[112] Nevertheless, due to circumstances in which a warrantless search may be reasonable, the judiciary has carved out narrow exceptions, which authorize the police to search areas and seize items notwithstanding the constitutional constraints.[113] These exceptions promote efficiency in the judicial process and protect citizens against the risk inherent in allowing contraband to go undetected on the streets.[114] However, even these "exception[s] to the warrant requirement, requir[e] [strict] adherence to [and scrutiny of what falls within] a *reasonableness* standard."[115] In reviewing the officer's conduct and search tactics used in a Fourth Amendment challenge, as a general rule, courts recognize that "the specific content and incidents of this right [to be free from unreasonable search and seizure] must be shaped by the context in which it is asserted."[116] Also, as explored below, courts might excuse the intrusive nature of a warrantless search when it is made with

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[111] *See* Davis v. United States, 131 S. Ct. 2419, 2423 (2011). Article I, section 12 of the New York Constitution states:

> 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, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

N.Y. CONST. art. 1, § 12. The Fourth Amendment of the United States Constitution states:

> 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, supported by Oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

U.S. CONST. amend. IV.

[112] *Davis*, 131 S. Ct. at 2423.

[113] *Id.*

[114] *See Gomez*, 838 N.E.2d at 1275-76 (noting that the dissent observed the heightened sophistication of the methods used to hide contraband); *see also Jimeno*, 500 U.S. at 251 (extending the authorization to search beyond the surfaces of the cars interior to objects found within the car).

[115] United States v. Alvarez-Porras, 643 F.2d 54, 64 (2d Cir. 1981) (providing an in-depth discussion of the enactment and application of the exclusionary rule and each of the judicially-crafted exceptions that allow for the admissibility of unlawfully seized evidence).

[116] Terry v. United States, 392 U.S. 1, 9 (1968).

voluntary consent.[117]

The United States Supreme Court has yet to establish a bright line rule as to what is permissible when a warrantless vehicular search is performed with consent. Rather, when the scope of the search is at issue, the Supreme Court objectively assesses what is included in the consent based on what a reasonable person would understand from the exchange between the officer and the accused.[118] More recently, in an effort to combat the sophistication of modern day drug smugglers and dealers in concealing, transacting, and using contraband, the Court has given "police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it" greater leeway to perform searches equivalent to a search executed with a valid warrant.[119]

In performing a vehicular search, the police encounter a variety of items and enclosures within the vehicle, including those in plain view whether easily accessible, hidden, locked away, and/or concealed. Items discovered might include clothing with pockets, suitcases, or other types of bags, wherein officers might find personal effects or criminal evidence. Officers also open compartments, which include, but are not limited to center consoles, glove compartments, enclosures built upon a dashboard, and inside of the trunk.

Based upon the specific item or area and its location in the vehicle, the police must make instantaneous judgments as to the scope of search that is reasonable under the circumstances.[120] Courts

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[117] *See generally Jimeno*, 500 U.S. 248 (1991) (noting that when consent is voluntarily given and the consenter had the authority to consent, courts may uphold the constitutionality of both the search and the fruits retrieved as a result). The author explores the importance of consensual searches as well as general reliability of evidence seized in this context. *Id.*

[118] *See, e.g.*, *Jimeno*, 500 U.S. 248; California v. Acevedo, 500 U.S. 565 (1991); New York v. Belton, 453 U.S. 454 (1981), *abrogated by Davis*, 131 S. Ct. 2419; Chimel v. California, 395 U.S. 752, 763 (1969), *abrogated by Davis*, 131 S. Ct. 2419.

[119] *Ross*, 456 U.S. at 800. For a full discussion of the similarities between searches conducted pursuant to a warrant and searches made when an officer acts upon probable cause, see generally *Ross*, 456 U.S. at 798-99 (recognizing that a warrant is procured based upon an application supporting and a magistrate's finding of probable cause and a warrantless search is lawful if the officer possessed probable cause and exigent circumstances justified immediate action).

[120] For a demonstration of how the United States Supreme Court assesses the constitutionality and scope of a lawful search and seizure see generally *Jimeno*, 500 U.S. 248 (concluding that the search of a brown paper bag found on the floor of the vehicle was within the scope of the consensual search), *Acevedo*, 500 U.S. 565 (finding the search of the trunk as well as a brown package contained therein was reasonable under the circumstances), and Arizona v. Gant, 556 U.S. 332 (2009) (upholding the constitutionality of the search of jacket

sometimes analyze the suspect's location at the time of the search to decide if the search was overly intrusive.[121] While the court in *McFarlane* did not consider defendant's proximity to the glove compartment in its determination,[122] whether a suspect is inside the car during a search, or alternatively, outside the car and already under arrest, lends itself to the reasonableness of the search conducted. The federal precedent governing automobile searches is explored below, considering (i) the scope of consensual vehicular searches, (ii) the scope of searches pursuant to the automobile exception, and (iii) the scope of searches incident to a lawful arrest.

A. Searches Incident to Arrest

In *Chimel v. California*,[123] the petitioner challenged his conviction on the ground that the evidence presented against him in court was unlawfully seized.[124] The Supreme Court granted certiorari to determine whether the seizure was improper as a result of an unreasonable search, and sought to clarify the scope of a search incident to a lawful arrest.[125] The petitioner's initial encounter with police was proper, as the police arrived at the petitioner's home with an arrest warrant related to the petitioner's alleged involvement in a burglary.[126] After presenting the arrest warrant, police asked for consent to "look around" because "[n]o search warrant had been issued."[127] Despite the petitioner objecting, the police conducted a search anyway, acting "on the basis of the lawful arrest."[128]

First noting that " 'the recurring questions of the reasonableness of searches' depend upon 'the facts and circumstances-the total atmosphere of the case,' " the Court explained, "those facts and circumstances [still] must be viewed in light of established Fourth

found within the car).

[121] *See, e.g.*, Thornton v. United States, 541 U.S. 615, 620 (2004) (explaining that "the scope of a search incident to a lawful arrest as [authorizing a search of] the person of the arrestee and the area immediately surrounding him" so as to "remove any weapon the arrestee might seek to use" and "prevent [the arrestee from engaging in conduct that might result in] the concealment or destruction of evidence").

[122] *See generally McFarlane*, 939 N.Y.S.2d 460.

[123] 395 U.S. 752 (1969), *abrogated by Davis*, 131 S. Ct. 2419.

[124] *Id.* at 753.

[125] *Id.* at 755.

[126] *Id.* at 753.

[127] *Id.* at 753-54.

[128] *Chimel*, 395 U.S. at 753-54.

Amendment principles."[129] In turn, since the home is a place deserving of the most protection, and due to the intrusive nature of the search—the police entered every room, moved furniture, searched for one hour, and seized just about any item they believed might "have come from the burglary,"[130] the search was found " 'unreasonable' under the Fourth and Fourteenth Amendments."[131] Recognizing "[t]he search here went far beyond the petitioner's person and the area from within which he might have obtained a weapon or something that could have been used as evidence against him," the Court concluded that the police were not justified "in the absence of a search warrant, for extending the search beyond that area."[132]

However, whether a search is reasonable under the circumstances varies by the context in which it occurs, as individuals have less protected privacy when operating or occupying an automobile than that maintained within a place of residence.[133] In *New York v. Belton*,[134] the court found, as an incident to a lawful arrest, the officer was authorized in seizing contraband from the pocket of a jacket retrieved from the glove compartment because it was within the "arrestees immediate control."[135]

In *Belton*, the officer stopped a vehicle "traveling at an excessive rate of speed" and upon approaching the vehicle, "smelled burnt marihuana" and observed "an envelope marked 'Supergold' that he associated with marihuana."[136] The officer then ordered the occupants out of the vehicle and placed each under arrest "for the unlawful possession of marihuana."[137] After the officer searched the occupants, he next "searched the passenger compartment of the car," from within he retrieved a jacket, searched its pockets, and found cocaine.[138] In its analysis, the Court observed, " 'the exigencies of the situation' may sometimes make exemption from the warrant require-

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[129] *Id.* at 765 (quoting United States v. Rabinowitz, 339 U.S. 56, 63, 66 (1950), *overruled in part by Chimel*, 395 U.S. 752).

[130] *Id.* at 754.

[131] *Id.* at 768.

[132] *Id.*

[133] *See generally Belton*, 453 U.S. 454 (observing the scope of a search of an automobile made incident to arrest).

[134] 453 U.S. 454 (1981), *abrogated by Davis*, 131 S. Ct. 2419.

[135] *Id*. at 462-63 (noting that the Court found the search of a glove compartment justified at the time of defendant's arrest because it was within defendant's reaching distance).

[136] *Id.* at 455-56.

[137] *Id*. at 456.

[138] *Id*.

ment 'imperative.' "[139] In this situation, an arresting officer is justified to conduct a "contemporaneous search without a warrant of the person arrested and of the immediately surrounding area."[140]

Expanding upon the precedent from *Chimel*, the Court established that "the police may [] examine the contents of any containers found within the passenger compartment," authorizing the search of these containers regardless of whether "open or closed."[141] The Court explained that a reasonable expectation of privacy in the container may exist, but "the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have."[142] Therefore, construing the compartment as an area "within the arrestee's immediate control", the Court held that the search therein did not violate the respondent's constitutional rights.[143]

The Supreme Court in *Thornton v. United States*[144] addressed whether a suspect's car can be searched incident to arrest if the arrest occurs after the occupant exited the vehicle.[145] In *Thornton*, the petitioner initially aroused the suspicions of an officer, who drove an unmarked car, after he "slowed down so as to avoid driving next to [the officer]."[146] The officer then "ran a check on petitioner's license tags, which revealed that the tags had been issued to a 1982 Chevy two-door and not to a Lincoln Town Car, the model of car the petitioner was driving."[147] However, before the officer was able to stop the petitioner, the petitioner pulled into a parking lot where he parked and exited his vehicle.[148] Upon approaching and questioning the petitioner, the petitioner responded nervously, as he was sweating and

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[139] *Belton*, 453 U.S. at 457 (quoting McDonald v. United States, 335 U.S. 451, 456 (1948)).

[140] *Id.* (citing *Chimel*, 395 U.S. at 763).

[141] *Id*. at 460-61.

[142] *Compare id.* at 461 (recognizing the arrestees' privacy interests in the passenger compartment of a car, but finding legal justification for the infringement of that interest), *with Chimel*, 395 U.S. at 763 (upholding the arrestee's privacy interest in the contents of the drawers in his home because none of the areas searched were within a reaching distance so as to present a danger to the police).

[143] *Belton*, 453 U.S. at 462-63.

[144] 541 U.S. 615 (2004).

[145] *Id.* at 617 (extending the scope of searches conducted incident to arrest by allowing police to conduct a search after the suspect has exited the vehicle where the suspect still presents a threat to the officer's safety).

[146] *Id.*

[147] *Id.* at 618.

[148] *Id.*

"began rambling and licking his lips."[149]

Despite the petitioner advising the officer that he did not possess, either on his person or in his vehicle, "any narcotics or weapons," the officer was still "[c]oncerned for his safety," which justified a subsequent consensual pat down.[150] The officer "again asked [the petitioner] if he had any illegal narcotics on him" after discovering "a bulge in petitioner's left front pocket."[151] At this point, the petitioner answered in the affirmative, admitting to possession of and voluntarily revealing "three bags of marijuana and . . . a large amount of crack cocaine."[152] The officer arrested the petitioner, seized the drugs in his possession, and then "searched petitioner's vehicle and found a BryCo 9-millimeter handgun under the driver's seat."[153]

After charged by a grand jury, the petitioner challenged that "the firearm [w]as the fruit of an unconstitutional search," requiring suppression.[154] The district court denied the motion on two grounds, the automobile search was (i) valid under *New York v. Belton*, as made incident to arrest, and, (ii) also authorized as an inventory search.[155] In the petitioner's subsequent appeal, he urged the court to interpret *Belton* as "limited to situations where the officer initiated contact with an arrestee while he was still an occupant of the car."[156] However, the Fourth Circuit affirmed the district court's ruling,[157] emphasizing the fact that "petitioner [had] conceded that he was in 'close proximity, both temporally and spatially,' to his vehicle" justified finding "the car [] within petitioner's immediate control."[158]

The Supreme Court affirmed, agreeing that "the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle."[159] The Court explained that especially in this context, there must be "a clear rule, readily understood by police officers and not depending on differing estimates of what items were or

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149 *Thornton*, 541 U.S. at 618.
150 *Id.*
151 *Id.*
152 *Id.*
153 *Id.*
154 *Thornton*, 541 U.S. at 618.
155 *Id.* at 618-19.
156 *Id.* at 619.
157 United States v. Thornton, 325 F.3d 189 (4th Cir. 2003).
158 *Thornton*, 541 U.S. at 619 (quoting *Thornton*, 325 F.3d at 196).
159 *Id.* at 621.

were not within reach of an arrestee at any particular moment."[160]

However, in *Arizona v. Gant*,[161] the Supreme Court regressed on its decision to afford such broad latitude to the police. In *Gant*, the defendant "was arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car."[162] After placing the defendant out of harm's way, the police searched the defendant's automobile, at which time one officer "found a gun, and the other discovered a bag of cocaine in the pocket of a jacket on the backseat."[163] In turn, the defendant challenged the search conducted as beyond the scope of the search incident to arrest exception, as "he posed no threat to the officers after he was handcuffed in the patrol car."[164] At the suppression hearing, the officers did not seek to justify the search based upon concerns as to their safety or the destruction of evidence, but rather, admitted their course of action was motivated by the mere fact it was permissible by the law.[165] The Court wholly rejected this contention, finding the officers' actions unreasonable under the circumstances.[166] The Court held that the police are authorized "to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment [or other area sought to be searched] at the time of the search."[167]

B. The Automobile Exception

In addition to the circumstances under which a search is conducted, courts also consider the knowledge possessed by the officer, relating to alleged criminal activity, at the time the search was conducted. In *California v. Acevedo*,[168] the Court analyzed the scope of a search made under the "automobile exception," regarding "its application to the search of a closed container in the trunk of a car."[169] In *Acevedo*, drug enforcement agents arranged a scheme with which

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160 *Id.* at 623.
161 556 U.S. 332 (2009).
162 *Id.* at 335.
163 *Id.* at 336.
164 *Id.*
165 *Id.* at 336-37.
166 *Gant*, 556 U.S. at 344.
167 *Id.*
168 500 U.S. 565 (1991).
169 *Id.* at 566.

the agents planned to "arrest the person who arrived to claim" a package containing marijuana from the Federal Express office.[170] The agents observed the suspect retrieve the package, carry it into an apartment, and thereafter, "leave the apartment and drop the box . . . that had contained the marijuana into a trash bin.[171] While one agent went to apply for a warrant, the others stayed at the scene and saw another suspect "leave the apartment carrying a blue knapsack which appeared to be half full."[172] The respondent was the next to arrive at the scene, entering the apartment and exiting within ten minutes "carrying a brown paper bag that looked full."[173] After observing the respondent put the brown paper bag in the trunk of his car, the police stopped him, opened the trunk, found marijuana in the bag, and placed the respondent under arrest.[174]

At trial, defense counsel moved to suppress the marihuana on the ground that the search was unconstitutional.[175] Yet, the Court observed that "the law applicable to [the search of] a closed container in an automobile [has been] a subject that has troubled courts and law enforcement officers."[176] The Court first looked to *Carroll v. United States*,[177] holding that "a warrantless search of an automobile, based upon probable cause to believe that the vehicle contained evidence of crime in the light of an exigency arising out of the likely disappearance of the vehicle, did not contravene the Warrant Clause of the Fourth Amendment."[178] Next, the Court looked to *United States v. Ross*,[179] in which it clarified that if there is probable cause, then it is lawful for the police to conduct "a 'probing search' of compartments and container within the automobile" as permissible under the automobile exception previously upheld in *Carroll*.[180] In turn, the Court reaffirmed these principles, concluding that because "the police had probable cause to believe that the paper bag in the automobile's trunk

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170 *Id.* at 567.

171 *Id.*

172 *Id.* ("The officers stopped [this suspect] as he was driving off, searched the knapsack, and found 1 ½ pounds of marijuana.").

173 *Acevedo*, 500 U.S. at 567.

174 *Id.* at 565.

175 *Id.*

176 *Id.* at 568-69.

177 267 U.S. 132, 151 (1925).

178 *Acevedo*, 500 U.S. at 569 (citing *Carroll*, 267 U.S. at 158-59).

179 456 U.S. 798 (1982).

180 *Acevedo*, 500 U.S. at 569 (quoting *Ross*, 456 U.S. at 800).

contained marijuana," the search of the trunk, as well as the brown paper bag was lawful.[181]

C. Consensual Vehicular Searches

Even when exigent circumstances exist and would likely justify the immediate action taken by the police without procuring a warrant, it is wise for officers to at least request permission to conduct a search to better the chances of evidence revealed by that search holding up in court. Consent to search is an exception, authorizing police to make a warrantless search, which is deeply rooted in our history. As held in *Schneckloth v. Bustamonte*,[182] "when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied."[183]

In *Schneckloth*, an officer "stopped an automobile when he observed that one headlight and its license plate light were burned out."[184] The respondent was one among six men in the vehicle.[185] Of the six men, only one, neither the driver nor the respondent, was able to provide the officer with identification.[186] After stepping out of the car in accordance with the officer's request, the officer asked for permission to search the vehicle and obtained the consent of one occupant who said, "[s]ure, go ahead."[187] According to the officer's later testimony at trial, there was neither protest nor hostility exhibited at this time, but rather, one occupant helped the officer in his search, as he voluntarily "open[ed] the trunk and glove compartment."[188] Although both the trunk and glove compartment were free of any contraband, "[w]added up under the left rear seat [of the vehi-

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[181] *Id.* at 580; *see also* People v. Keita, No. 2862-2009, 2011 WL 1936076, at *1, *7-*8 (N.Y. Sup. Ct. May 19, 2011) (explaining that probable cause exists "when it is more likely than not that a crime took place and that the arrestee is the perpetrator"). Although not expressly mentioned in the opinion, it could be argued that the officer in *McFarlane* who observed the open liquor bottle at least had reasonable suspicion to believe the crime of driving while intoxicated has been committed by the defendant. *McFarlane*, 939 N.Y.S.2d at 461.

[182] 412 U.S. 218 (1973).

[183] *Id.* at 248.

[184] *Id.* at 220.

[185] *Id.*

[186] *Id.*

[187] *Schneckloth*, 412 U.S. at 220.

[188] *Id.*

cle], the officer discovered "three checks that had previously been stolen from a car wash."[189] These checks were seized and presented as evidence against the respondent and the search was challenged on the ground that the prosecution had not shown that the consenting occupant had "known that his consent could have been withheld and that he could have refused to have [the] vehicle searched."[190]

To determine whether the search was lawfully conducted, the Court had to assess whether consent was voluntary.[191] In answering this question, the Court noted that historically courts have interpreted "voluntariness" to accommodate "the complex of values implicated in police questioning of a suspect."[192] The Court explained that a determination of voluntariness must be made so as to balance the "need for police questioning as a tool for the effective enforcement of criminal law"[193] against the need to prevent "unfair and even brutal police tactics [which] pose[] a real and serious threat to civilized notions of justice.[194] Thus, relying on the Due Process Clause for guidance, the Court noted that the police are neither required to "forgo all questioning" nor "given carte blanche to extra what[ever] they can from a suspect."[195]

Instead, adhering to the standard used for confessions by "Anglo-American courts for two hundred years," the Court explained consent to search, just like a confession, is voluntary if it is "the product of an essentially free and unconstrained choice by its maker."[196] Moreover, the Court stated that voluntariness is based on "the totality of all the surrounding circumstances," considering the psychological characteristics of the accused and the context in which consent was requested.[197] Thus, in order to prevent an accused from "frustrat[ing] the introduction into evidence of the fruits of [a] search by simply failing to testify that he in fact knew he could refuse to consent," the Court concluded that "knowledge of a right to refuse is not a prerequisite [to prove] a voluntary consent."[198] Therefore, ab-

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189 *Id.*
190 *Id.* at 222.
191 *Id.* at 224-25.
192 *Schneckloth*, 412 U.S. at 225.
193 *Id.* (citing Culombe v. Connecticut, 367 U.S. 568, 578-80 (1961)).
194 *Id.*
195 *Id.*
196 *Id.*
197 *Schneckloth*, 412 U.S. at 226.
198 *Id.* at 230, 234.

sent duress or coercion, the Court found that consent was voluntary and the search conducted constitutional.[199]

Since *Schneckloth*, the United States Supreme Court and lower federal courts have consistently held that voluntary consent is an appropriate justification for a warrantless search. There are no bright-line requirements to establish the voluntariness of the consent provided, but rather, as with reasonableness, courts must analyze whether consent was voluntarily given on a circumstantial basis.[200] Likewise, in *Ohio v. Robinette*,[201] when "presented with the question whether the Fourth Amendment requires that a lawfully seized defendant must be advised that he is 'free to go' before his consent to search will be recognized as voluntary," the Court held that no such requirement exists.[202] In *Robinette*, the respondent was pulled over by a deputy who "clocked [him driving] at 69 miles per hour" along a highway with a "posted speed limit [of] 45 miles per hour."[203] After "a computer check which indicated that [the respondent] had no previous violations," the deputy "issued a verbal warning."[204] The deputy gave the respondent back his license and then inquired whether there was illegal contraband in the vehicle.[205] The respondent advised that there was not, and the deputy then requested permission to search the vehicle to confirm.[206] Although there was nothing to indicate whether and why the deputy had cause to suspect contraband, the respondent consented to the search.[207] The search revealed both marijuana and "a pill which was later determined to be methylenedioxymethamphetamine (MDMA)," and the deputy arrested the respondent for unlawful possession.[208]

The respondent's initial motion to suppress was unsuccessful, but the ruling was reversed on appeal, as the Supreme Court of Ohio adopted "a bright-line prerequisite for consensual interrogation," providing in pertinent part that an "attempt at consensual interrogation must be preceded by the phrase 'At this time you legally are free

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199 *Id.* at 248.
200 *Id.* at 248-49.
201 519 U.S. 33 (1996).
202 *Id.* at 35.
203 *Id.*
204 *Id.*
205 *Id.* at 35-36.
206 *Robinette*, 519 U.S. at 36.
207 *Id.*
208 *Id.*

to go' or by words of similar import.' "[209] However, rejecting "this per se rule," the United States Supreme Court reversed, reiterating the well established rule that "[v]oluntariness is a question of fact to be determined from all the circumstances."[210]

IV. NEW YORK STATE APPROACH

Like its federal counterpart, the express language in Article I, Section 12 of the New York State Constitution guarantees every citizen the right to be secure against unreasonable searches, seizures, and other interceptions.[211] New York State courts also recognize the vast majority of exceptions to the Warrant Clause that are upheld in federal courts.[212] For instance, New York State courts likewise observe (i) the search incident to arrest exception, (ii) the automobile exception, and (iii) consensual vehicular searches as means that authorize warrantless searches, as reasonable under the circumstances.

However, when a search or seizure is challenged in state court, New York State courts view the protections afforded under its state constitution more generously than federal courts.[213] Each aforementioned exception is explored below, illustrating its application at the state level. At the outset, it is worth noting that notwithstanding New York State courts' liberal treatment of the state search and seizure clause, the precedent below shows that the court in *McFarlane* afforded more privacy rights than reasonably necessary under the circumstances.

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[209] *Id.* (quoting State v. Robinette, 653 N.E.2d 695, 696 (Ohio 1995), *rev'd by Robinette*, 519 U.S. 33).

[210] *Id.* at 40 (quoting *Schneckloth*, 412 U.S. at 248-49).

[211] N.Y. CONST. art. I, § 12.

[212] *See generally* People v. Singleteary, 324 N.E.2d 103, 105 (N.Y. 1974) ("The Constitutions, both Federal and State, do not forbid all searches and seizures without a warrant, but only unreasonable ones. There are classical categorical exceptions permitting searches without a warrant.") (internal quotation marks omitted).

[213] *See, e.g.*, People v. Torres, 543 N.E.2d 61, 63 (N.Y. 1989) ("[A]lthough the history and identical language of the State and Federal constitutional privacy guarantees generally support a policy of uniformity, [the Court of Appeals of New York] has demonstrated its willingness to adopt more protective standards under the State Constitution when doing so best promotes predictability and precision in judicial review of search and seizure cases and protection of the individual rights of our citizens.") (quoting People v. P.J. Video, 501 N.E.2d 556, 561 (N.Y. 1986) (internal quotation marks omitted)).

A. Searches Incident to Arrest

In *People v. Belton*,[214] the Court of Appeals of New York, in reviewing the improper search and seizure claim before it, first observed that "[t]he identical wording of the two provisions d[id] not proscribe [it from] more strictly construing the State Constitution than the Supreme Court has construed the Federal Constitution."[215] Nevertheless, the court found that the search did not violate the state constitution and was reasonable under the circumstances.[216]

In *Belton*, "a State trooper stopped [defendant's] car [which was] speeding along the State Thruway."[217] From outside the vehicle, the trooper smelt marihuana and saw "an envelope . . . frequently used in sales of that substance" on the floor.[218] Based upon these plain view observations, the trooper ordered the occupants to step out of the car to pat them down.[219] The trooper also "inspected the envelope and ascertained that it did contain marihuana."[220] After each occupant was placed under arrest, the trooper searched the vehicle, including the passenger compartment and defendant's jacket.[221] Inside of the zippered pocket of the jacket, the trooper found "a small amount of cocaine."[222] Defendant claimed that the trooper was not authorized to search the vehicle after each occupant was arrested, and thus, the seizure was improper.[223]

In its analysis, the court observed, the search incident to arrest exception was once "limited both temporally and geographically" so that a search was permissible only if the search "closely follows arrest and is of the person of the individual arrested and the area within his immediate reach."[224] However, "extending *Chimel* to the facts of this case, in which defendant's jacket was neither on his person nor within his reach," the court noted that federal courts no longer impose

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214 432 N.E.2d 745 (N.Y. 1982).
215 *Id.* at 745.
216 *Id.* at 746.
217 *Id.*
218 *Id.*
219 *Belton*, 432 N.E.2d at 746.
220 *Id.*
221 *Id.*
222 *Id.*
223 *Id.*
224 *Belton*, 432 N.E.2d at 747.

"any distinct spatial boundary" on this exception.[225]

In light of the rationale supporting a broader scope of the search incident to arrest exception, the court reasoned the "[j]ustification for an automobile search contemporaneous with a valid arrest arises . . . not only from the mobility of an automobile, or the reduced expectation of privacy as to materials within the automobile, or both, but also from the circumstances which validate the arrest."[226] Therefore, the court explained:

> [A] valid arrest for a crime authorizes a warrantless search—for a reasonable time and to a reasonable extent—of a vehicle and of a closed container visible in the passenger compartment of the vehicle which the arrested person is driving or in which he is a passenger when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of the crime) or there is reason to believe that a weapon may be discovered or access to means of escape thwarted.[227]

Applying this principle to the facts in *Belton*, the trooper was justified in stopping the car and ordering occupants out of the vehicle to investigate his suspicious plain view observations.[228] The court found, "the discovery of the marihuana-filled envelope on the car floor and the odor of the substance . . . [gave the trooper] reason to believe that the automobile might contain other drugs."[229] Thus, the trooper was able to "contemporaneously search the passenger compartment, including any containers [and defendant's jacket] found" as an incident to the lawful arrest.[230]

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[225] *Id.*

[226] *Id.* at 747-48.

[227] *Id.* at 748.

[228] *Id.* (noting however, that "a motorist stopped for a traffic infraction may not be searched unless when the vehicle is stopped there are reasonable grounds for believing the driver guilty of a crime, as distinct from a traffic offense.") (citing People v. Marsh, 228 N.E.2d 783, 785 (N.Y. 1967)).

[229] *Belton*, 432 N.E.2d at 748.

[230] *Compare id.* (noting that the officer's "reason to believe that the car may contain evidence related to crime for which the occupant was arrested" is sufficient to satisfy the search incident to arrest exception), *with Blasich*, 541 N.E.2d at 45 (noting that automobile exception imposes a heavier burden, requiring probable cause).

B. The Automobile Exception

In *People v. Blasich*,[231] defendant was convicted for his unlawful possession of cocaine, as well as "burglar's tools and illegal weapons, all of which were found in the automobile that he occupied" at the time of arrest.[232] On appeal, defendant challenged that the court erred in denying his motion to suppress because the police were not authorized to conduct the warrantless search of his car.[233] In its analysis, the court turned to the automobile exception, observing that it was applicable under the circumstances so as to excuse the warrant requirement and authorized the warrantless search.[234]

In *Blasich*, an officer "responded to a report of a suspicious vehicle in parking lot number two at [Kennedy Airport]."[235] Upon arriving at the scene, "[t]he officer observed the described vehicle" which was occupied by three persons who appeared to be cruising along without cause, as "the car passed a number of vacant parking spaces and thus did not appear to be attempting to park."[236] The officer then stopped the vehicle, briefly questioned the driver (defendant), and confirmed that the driver's license and vehicle's registration were intact.[237] In response to the officer's questions, the driver commented about "buy[ing] gas at a nearby Amoco station."[238] In turn, "satisfied that no crime has been committed," the officer let the vehicle proceed.[239]

However, later that evening, the officer learned from a radio report that the car stopped earlier that day at Kennedy had failed to pay the parking toll required.[240] As the officer recalled that defendant had mentioned that he planned to buy gas, the officer proceeded to the gas station where he spotted defendant inside of his vehicle.[241] The officer went over to the vehicle at which time he observed "on the floor of the passenger side of the front seat a number of tools

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231 541 N.E.2d 40 (N.Y. 1989).
232 *Id.* at 41.
233 *Id.* at 41-42.
234 *Id.* at 45-46.
235 *Id.* at 42.
236 *Blasich*, 541 N.E.2d at 42.
237 *Id.*
238 *Id.*
239 *Id.*
240 *Id.*
241 *Blasich*, 541 N.E.2d at 42.

commonly used to break into cars—a 'slim jim', a lock-punching device, a chisel, and a screwdriver."[242] The officer also saw a gym bag on the front seat and two parking lot cards in the back seat.[243] The officer then "seized the tools and the cards."[244] In making this seizure, the officer did not immediately arrest the occupants, but "advised [them] of their rights and that they were not free to leave."[245] The officer then "took [the occupants] to the station to investigate further."[246]

Upon questioning at the police station, the officer learned that defendant had previously misidentified himself.[247] In turn, the officer arrested defendant for criminal impersonation and "ordered the vehicle impounded."[248] During the vehicle's search, the police discovered and seized "a .38 caliber revolver[,] an incendiary device and cocaine" from the gym bag.[249] The only issue before the court on appeal was "whether, under these circumstances, the police were authorized to search the blue gym bag seen on the front seat of the car."[250]

The court first considered the scope of a search permitted as incident to a lawful arrest, noting that "such a search must be limited to the arrestee's person and the area from within which he might gain possession of a weapon or destructible evidence."[251] The court then turned to the automobile exception, which tends to authorize a broader search, explaining that "when the occupant of an automobile is arrested, the very circumstances that supply probable cause of the arrest may also give the police probable cause to believe that the vehicle contains contraband, evidence of a crime, a weapon or some means of escape."[252] Under such circumstances, the police are authorized to search the vehicle in question, "not as a search incident to arrest, but rather as a search falling within the automobile exception to the war-

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242 *Id.*
243 *Id.*
244 *Id.*
245 *Id.*
246 *Blasich*, 541 N.E.2d at 42.
247 *Id.*
248 *Id.*
249 *Id.*
250 *Id.* at 43.
251 *Blasich*, 541 N.E.2d at 43 (citing People v. Smith, 452 N.E.2d 1224 (N.Y. 1983)).
252 *Id.*

rant requirement."[253]

The court further distinguished these two exceptions, recognizing that "in contrast to the search-incident-to-arrest exception, [the automobile exception does not] dispense with the requirement that there be probable cause to search the vehicle."[254] When there is probable cause in these circumstances, the automobile, as well as its compartments and locked containers may be searched.[255] In addition, the court explained, unlike "a search incident to arrest, which is governed by stricter temporal and spatial limits,"[256] the automobile exception is "applicable whether the search is conducted at the time and place where the automobile was stopped or whether, instead, the vehicle is impounded and searched after removal to the police station."[257]

Defendant argued, *inter alia*, that the officer lacked probable cause for arrest and the crime underlying the arrest was unrelated to the crime uncovered by the search, and thus, the search was unlawful.[258] Rejecting these contentions, the court noted, "[probable] cause does not require proof sufficient to warrant a conviction beyond a reasonable doubt."[259] The court found the automobile exception authorized the search of the car and gym bag found therein because under the facts and circumstances the officer had probable cause to arrest defendant.[260]

The court agreed however, that "[t]he connection between the crime and the search is significant . . . because the nature of the crime and the circumstances surrounding the arrest are what provide . . . probable cause for the search."[261] Yet, the court stated, "there is no inflexible requirement that the search concern only items relating to crimes for which the defendant is formally arrested."[262] Therefore,

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[253] *Id.* (citing *Belton*, 432 N.E.2d at 747-48).

[254] *Id.* (emphasizing that probable cause to search is still required under the automobile exception) (citing People v. Langen, 456 N.E.2d 1167, 1173 (N.Y. 1983)).

[255] *Id.* at 45 (citing *Langen*, 456 N.E.2d at 1173).

[256] *Blasich*, 541 N.E.2d at 45 (citing *Langen*, 456 N.E.2d at 1173).

[257] *Id.* (citing People v. Orlando, 438 N.E.2d 92, 94 (N.Y. 1982)).

[258] *Id.*

[259] *Id.* at 44.

[260] *Id.*

[261] *Blasich*, 541 N.E.2d at 45.

[262] *Id.* (citing People v. Ellis, 465 N.E.2d 826, 828-29 (N.Y. 1984)). In *Ellis*, the court observed that "[t]he basis for the automobile exception to the warrant requirement is the reduced expectation of privacy associated with automobiles and the inherent mobility of such vehicles." *Ellis*, 465 N.E.2d at 828. The court explained that this diminished expectation of

affirming the lower court's ruling, the court concluded that the officer acted within the scope of his authority in the arrest, search, and seizure.[263]

C. Consensual Vehicular Searches

The search incident to arrest exception and automobile exception are commonly invoked when a search occurs in the automobile context; however, the exception to the Warrant Clause that was at issue in *McFarlane* was that of a consensual vehicular search. Although the majority in *McFarlane* found that the scope of the search exceeded the authority of defendant's consent,[264] a review of New York State decisional law suggests that this conclusion was unwarranted.[265] Although the police conduct searches and courts assess challenges on a case-by-case basis, when police have cause to believe contraband is concealed in a vehicle, both state and federal courts observe (i) a reduced expectation of privacy in an automobile,[266] and (ii)

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privacy in automobiles "supplies the justification for the search and when it appears that the police have probable cause to find contraband of the crime . . . or to find a weapon in the car . . . a warrantless search is permissible." *Id.* (observing that contrary to defendant's contention, "it [was] irrelevant that defendant was arrested for a traffic infraction" because the police nevertheless had probable cause to search the car for a gun).

[263] *Blasich*, 541 N.E.2d at 45.

[264] *McFarlane*, 939 N.Y.S.2d at 461 (noting that the court suppressed the evidence seized having found the search beyond the scope of the consent provided).

[265] *See, e.g.*, People v. Mosley, 272 N.Y.S.2d 493 (App. Div. 2d Dep't 1966); People v. Artis, 607 N.Y.S.2d 400 (App. Div. 2d Dep't 1994); *Mitchell*, 621 N.Y.S.2d 581; People v. Williams, 752 N.Y.S.2d 709 (App. Div. 2d Dep't 2002); People v. Leiva, 823 N.Y.S.2d 494 (App. Div. 2d Dep't 2006); People v. Quagliata, 861 N.Y.S.2d 792 (App. Div. 2d Dep't 2008) (observing that in each of these cases where consent was voluntary and the suspect failed to place express limitations on the scope of the consent to search, the consensual vehicular search was authorized). *Compare id.* (noting that the searches conducted in these cases were reasonable under the circumstances, *with Gomez*, 838 N.E.2d at 1273-74 (emphasizing that the court's holding in this case, requiring specific consent, was limited in its application to a search that caused destruction or damage to the vehicle).

[266] *See, e.g.*, Cady v. Dombrowski, 413 U.S. 433, 439 (1973) ("Although vehicles are 'effects' within the meaning of the Fourth Amendment, 'for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars.' ") (quoting Chambers v. Maroney, 399 U.S. 42, 52 (1970)); Preston v. United States, 376 U.S. 364, 366-67 (1964) ("Common sense dictates . . . that questions involving searches of motorcars or other things readily moved cannot be treated identical to questions arising out of searches of fixed structure like houses. For this reason, what may be an unreasonable search of a house may be reasonable in the case of a motorcar."); *accord Belton*, 432 N.E.2d at 747 ("Among the factors that contribute to this decreased expectation are that automobiles operate on public streets, they are serviced in public places, their interiors are highly visible; and they are subject to extensive regulation and inspection.") (quoting Rakas v. Illinois, 439 U.S. 128, 154,

voluntary consent to search,[267] as grounds to find the search reasonable under the circumstances. The search of a locked compartment, as in *McFarlane*, is more intrusive than a sweep of the open areas in a vehicle. Yet, in the absence of express limitations placed on the scope of the search, implicitly authorized by general consent to search, police should have the authority to search all standard fixtures and enclosures in a vehicle.

In *People v. Gomez*, the New York Court of Appeals determined whether "a police officer may conduct a destructive search of an automobile based on a suspect's general consent to search."[268] After carefully assessing the exchange between the officer and defendant before defendant consented to the search, and the circumstances under which the search was made, the court concluded, "the search [] exceeded the scope of defendant's consent."[269]

In *Gomez*, the police ran a check on defendant's vehicle after observing windows excessively tinted in violation of Vehicle and Traffic Law, section 375(12-a)(b).[270] The check did not "turn up any negative information," but the police followed the car for several blocks and then pulled defendant over.[271] One officer approached defendant to speak with him, while the other officer, "as was his custom in car stops, inspected the undercarriage of the car for evidence of a hidden compartment."[272] In doing so, the inspecting officer "noticed a fresh undercoating around the gas tank."[273] Meanwhile, the officer who was speaking with defendant learned that defendant's registration card had been tampered with.[274] Each of these factors caused the police "to suspect that the vehicle may have been used to transport

n.2 (1978) (Powell, J., concurring) (internal quotation marks omitted)).

[267] *Mosley*, 272 N.Y.S.2d 493; *Artis*, 607 N.Y.S.2d 400; People v. Mitchell, 621 N.Y.S.2d 581 (App. Div. 1st Dep't 1995); *Williams*, 752 N.Y.S.2d 709; *Leiva*, 823 N.Y.S.2d 494; *Quagliata*, 861 N.Y.S.2d 792 (observing that in each of these cases where consent was voluntary and the suspect failed to place express limitations on the scope of the consent to search, the consensual vehicular search was authorized). *Compare Quagliata*, 861 N.Y.S.2d at 792 (noting that the searches conducted in these cases were reasonable under the circumstances, *with Gomez*, 838 N.E.2d at 1273-74 (emphasizing that the court's holding in this case, requiring specific consent, was limited in its application to a search that caused destruction or damage to the vehicle).

[268] *Gomez*, 838 N.E.2d at 1272.

[269] *Id.*

[270] *Id.*

[271] *Id.*

[272] *Id.*

[273] *Gomez*, 838 N.E.2d at 1272.

[274] *Id.*

drugs."[275] The officers inquired whether defendant had any contraband in the vehicle, "to which defendant responded 'No.' "[276] This exchange was followed up by the officers' "request for consent to search the car, which defendant gave."[277] Upon receiving consent, defendant was directed to exit the vehicle and "sit on the rear bumper and wait."[278]

In the back seat of the car, one officer saw " 'non-factory' carpet in the location above the area where he earlier spotted fresh undercoating."[279] Next, the officer "pulled up the glued carpeting and discovered a cut in the floorboard."[280] As each observation raised suspicions that contraband was concealed within the vehicle, the officer then cut open the sheet metal using a pocketknife.[281] However, the small slit created by the knife made it difficult for the officer to "reach what he thought was a plastic bag," and thus, the officer "retrieved a crowbar" from the police car, "which he used to pry open part of the gas tank."[282] The officers found "seven bags of cocaine weighing approximately 1 ½ pounds from the compartment found in the gas tank."[283]

After defendant's arrest, he challenged that (i) he did not voluntarily consent to the search, and alternatively, (ii) if the search were voluntary, the drugs seized were inadmissible, as "the search exceeded the scope of the consent."[284] The motion was denied and the suppression court's ruling affirmed on appeal, as the First Department, Supreme Court, Appellate Division found the search within the scope of the consent because of "defendant's failure to place any limitations on the search, and his failure to object to the search as it was conducted."[285]

In assessing the Appellate Division's conclusion, the court relied on the objective standard set by the United States Supreme Court

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[275] *Id.*
[276] *Id.*
[277] *Id.*
[278] *Gomez*, 838 N.E.2d at 1272.
[279] *Id.*
[280] *Id.*
[281] *Id.*
[282] *Id.*
[283] *Gomez*, 838 N.E.2d at 1272.
[284] *Id.* at 1272-73.
[285] *Id.* at 1273 (quoting *Gomez*, 782 N.Y.S.2d at 744).

in *Jimeno*.[286] The court noted the Second Circuit had applied this standard, concluding "an individual who consents to a search of his car should reasonably expect readily-opened containers discovered inside the car will be opened and examined."[287] However, in the instant case, the court recognized that the officer had not merely opened containers or looked inside of enclosures, but rather, "damaged the vehicle by removing attached carpeting and physically altering sheet metal with a crowbar."[288]

Moreover, the court explained, "a general consent to search, on its own, does not give an officer unfettered search authority."[289] Thus, because the search conducted had "impair[ed] the structural integrity of [the] vehicle" and "result[ed] in the vehicle being returned [to defendant] in a matter materially different manner than it was found," the court concluded that this search "clearly crossed the line."[290] The court stated that specific consent was required to justify the severity of the search and allow the items revealed as a result to stand up in court.[291]

V. Conclusion

The holding in *McFarlane* illustrates a lack of guidance in the area of consensual searches.[292] The court primarily relied upon *Gomez* as authority supporting its decision, but it is hardly reasonable to compare the overly invasive search tactics used in *Gomez* with the use of a key to unlock a glove compartment, as was the case in *McFarlane*. The constitutional protection afforded at the state and federal level prohibits *unreasonable* searches and seizures. As shown by the caselaw herein, striking a balance between privacy rights and law enforcement duties is not a simple task. Yet, the court in *McFarlane*, in finding a locked glove compartment beyond the scope of general consent to search, created a dangerous precedent. The court gave defendant a "get out of jail free card" and future criminal offenders a safe house in which they can carry and conceal contraband

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[286] *Id.*
[287] *Id.* at 1273 (quoting United States v. Snow, 44 F.3d 133, 136 (1995)).
[288] *Gomez*, 838 N.E.2d at 1273.
[289] *Id.*
[290] *Id.*
[291] *Id.* at 1273-74.
[292] *McFarlane*, 939 N.Y.S.2d at 461.

without fearing its discovery in the course of a simple traffic stop.

Absent a suspect properly placing limitations on the scope of his or her consent, police should have the authority to search the entire vehicle including enclosures and containers therein so long as the search is conducted reasonably. The police should not be required to presume that a suspect intended to, but failed to limit the scope of his or her consent, as doing so would inhibit law enforcement. Likewise, allowing criminals to carry and/or use contraband while occupying roads and highways endangers the public at large. Every case varies, but the situation in *McFarlane* is commonplace—a lawful traffic stop, plain view observations, police request consent to search, find contraband, and the search is challenged in an effort to dispose of the criminal charges.

The officer in *McFarlane* neither used coercion or force to gain consent, nor engaged in intrusive tactics so as to destroy or impair the integrity of the automobile. Defendant could have, but failed to, limit his consent. Thus, contrary to what the majority concluded, the officer's conduct appeared lawful at is inception and the search reasonably executed. The fact that defendant was wise enough to lock his glove compartment, after purposefully using it to conceal a weapon unlawfully possessed, should not have created a barrier to the officer's search.

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