State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 50 People v Samual Nektalov

In March 2018, two narcotics detectives in Queens spotted a 2002 Honda with tinted windows and pulled it over. Samual Nektalov was in the front passenger seat. When one of the detectives approached the driver for his license and registration, he saw a glass jar with marijuana in the center console and arrested both men. In a pat-down of Nektalov, he recovered a ziplock bag of cocaine from his pants pocket and another from his sock. Nektalov was charged with two misdemeanor counts of drug possession. Nektalov moved to suppress the evidence, arguing that the police lacked probable cause for the traffic stop and for his arrest. At the suppression hearing, the arresting officer testified that he stopped the Honda because it was "traveling with excessively tinted windows." As for the arrest, he said the jar of marijuana was in plain view and in close proximity to Nektalov.

Criminal Court denied the suppression motion, saying, "The police are authorized to stop a vehicle which is observed committing a traffic violation and are then authorized to direct the driver and passengers to exit the detained vehicle.... Here, [the detective] properly stopped the vehicle in which defendant was a passenger because the car apparently violated Vehicle and Traffic Law (VTL) § 375(12-a)(b)(2) for having excessively tinted windows...." The statute prohibits the use of windshields and vehicle windows with "a light transmittance of less than seventy percent." The court further found that the jar of marijuana in plain sight provided the detective with probable cause to arrest and search Nektalov. He subsequently pled guilty to a class A misdemeanor possession offense and was sentenced to time served and a $250 fine.

The Appellate Term for the 2nd, 11th and 13th Judicial Districts affirmed on a 2-1 vote, saying "the credible evidence at the [suppression] hearing, where the detective testified that he stopped defendant's vehicle for having 'excessively tinted windows,' was sufficient to establish that the detective had probable cause to lawfully stop the 'vehicle due to an apparent violation of [VTL] § 375(12-a)(b)(2)'...." It said the marijuana "in plain view" and "in close proximity to" Nektalov "was sufficient to establish that the arrest was lawful."

The dissenter said the detective lacked probable cause for the traffic stop. "On this bare-bones record, the majority concludes that the vehicle was properly stopped because the car apparently violated [VTL] § 375(12-a)(b)(2). There is absolutely nothing in this record, credible or otherwise, to support that conclusion. The officer never testified as to how he came to the conclusion that the windows were excessively tinted as the officer did in Bacquie (154 AD3d 648); rather, he merely stated that they were tinted..... The uncontroverted testimony at the hearing was that the officer stopped the vehicle based solely on his whim that the vehicle had 'excessively tinted' windows.... Even if the majority concludes that the officer's testimony was credible, the record is still devoid of probable cause for the traffic stop."

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State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 51 People v Jason Brown

Two plainclothes officers patrolling in the Bronx in May 2017 saw the front seat passenger in a car traveling ahead of them open and close the side door once while the car was in motion. The officers activated their lights to stop the car and one of them walked up to the driver, Jason Brown, and asked where he was going. Brown said he was taking the woman in the front passenger seat to a bank to make a deposit. The officer smelled marijuana, asked Brown to step out of the car, and asked if he had "anything on him." Brown replied, "I have some E, it is my party drug," and the officer retrieved ecstasy from his jacket pocket. The officers seized marijuana and more ecstasy in a search of the car.

Charged with misdemeanor drug possession, Brown moved to suppress the evidence as the result of an illegal stop. The arresting officer testified at the hearing that he did not see Brown commit any traffic violations, but he thought it was unusual that a passenger would open the door of a moving car and he was concerned that someone might need "some sort of aid."

Criminal Court denied the suppression motion, saying "it is clear that the stop ... constituted a seizure under the Fourth Amendment. The record is further clear that at the time of the stop the defendant did not commit a traffic violation nor did the officer have a reasonable suspicion of any criminal activity. However, the stop herein was reasonable to ensure that the passenger in the moving vehicle was safe and did not need aid." The arresting officer "personally observed a passenger in the defendant's vehicle open and close the door while the vehicle was in motion. It was reasonable for the officer to be concerned for the passenger's safety and this safety concern outweighs the interference of the defendant's liberty." Brown pled guilty to a reduced charge of disorderly conduct and was given a conditional discharge.

The Appellate Term, First Department affirmed. "In these circumstances, the stop of the vehicle was justified based on considerations of public safety, even where an 'actual violation of the Vehicle and Traffic Law [is] not ... detectable,'" it said, citing People v Ingle (36 NY2d 413 [1975]), "and this safety concern outweighs the interference of defendant's liberty...."

Brown argues that his warrantless stop was an unconstitutional seizure under People v Hinshaw (35 NY3d 427 [2020]), which held, "Automobile stops are lawful only when based on probable cause that a driver has committed a traffic violation; when based on reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime; or, when conducted pursuant to nonarbitrary, nondiscriminatory, uniform traffic procedures." He says the police stop in this case was not justified under any of the Hinshaw conditions; and he argues, "When ... the police are operating in their law enforcement capacity to investigate potential criminal conduct – as they clearly were here, this Court should eschew a public service exception [to the Fourth Amendment] and adhere to its long-held rule requiring reasonable suspicion that a crime is being or has been committed."

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State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 52 People v Kevin L. Thomas

An off-duty Elmira police officer spotted Kevin Thomas driving his Porsche Cayenne on Interstate 81 in Pennsylvania in September 2016. The officer knew Thomas was on parole and was prohibited from leaving Chemung County without permission. He also knew Thomas was approaching his 9 pm curfew, another condition of his parole. The officer alerted an on-duty Elmira officer that Thomas was approaching the city. The second officer, Edward Linehan, waited near an off-ramp that Thomas would likely take When Thomas arrived around 9:20 pm, Linehan saw him roll through a stop sign and stopped him. Linehan ran his license and registration, which came back clean. After Thomas admitted the infraction, Linehan asked him about his curfew, whereabouts and activities, and said Thomas gave inconsistent and dishonest answers. Thomas refused to consent to a search of his car, and Linehan then requested a canine unit to conduct an exterior sniff-search of the Porsche. When he was finally informed that the unit was unavailable, he called the parole officer who supervised Thomas's case and informed him of the circumstances. The parole officer determined that Thomas had violated two conditions of his parole and went to the scene to investigate. While waiting for him to arrive, Linehan frisked Thomas and found a New York City restaurant receipt issued that day, which he gave to the parole officer. When Thomas refused to answer questions about his activities, the parole officer conducted a warrantless search of his car and found, in a closed shoebox, 2,400 packets of heroin. The traffic stop had lasted at least 40 minutes.

Thomas moved to suppress the evidence, arguing the prolonged traffic stop and vehicle search were unlawful. After County Court denied his motion, Thomas pled guilty to third-degree criminal possession of a controlled substance and was sentenced to nine years in prison.

The Appellate Division, Third Department affirmed in a 3-2 decision, saying, "To extend a stop beyond its original purpose, circumstances must arise that 'furnish the [officer] with a founded suspicion that criminal activity is afoot'.... Defendant's multiple and inconsistent explanations about his travels, which the police officers knew were false, coupled with his parole situation and his nervous demeanor throughout the encounter, combined to give the officers a founded suspicion of criminality.... As such, the police officers were authorized to extend the scope of the stop beyond its original justification by requesting consent to search defendant's vehicle and, upon denial, detaining defendant to await a canine sniff of the vehicle's exterior." When they "learned 25 to 30 minutes into the stop that the canine unit was unavailable," the officers "were permitted to continue a common-law inquiry" and their decision to call the parole officer "was within reason." It said the parole officer's "decision to search the vehicle was reasonable and substantially related to the performance of his duties."

The dissenters argued that Thomas "was detained beyond what was reasonable under the circumstances" because Linehan lacked a founded suspicion of criminality. They said the justification for the detention ended when Thomas admitted rolling through the stop sign and Linehan determined "that defendant's driving privileges were valid. In our view, once Linehan confirmed that there was nothing wrong with defendant's license or registration, all that remained at this point was for Linehan to issue a citation...." While Thomas "did give conflicting answers" and acted nervously during Linehan's continued questioning, this "came after the initial justification for stopping and detaining defendant had already dissipated.... Indeed, between the time when Linehan effectuated the traffic stop and processed defendant's license and registration, Linehan did not observe anything suspicious by defendant so as to give him founded suspicion that criminality was afoot in order to continue defendant's detention.... Accordingly, the drugs, which were discovered ... after Linehan processed defendant's license and registration, should have been suppressed."

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State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 53 People v Dominic F. Spirito

Dominic Spirito was a recently-released parolee living in Tioga County with his mother and stepfather in December 2018, when his mother called the local parole office to report that she saw a picture of Spirito with a gun, she was worried that he had one, and she gave her permission to check the house. The parole supervisor assigned Parole Officer Brian Bolden to look into the report and search the house. He was joined by three more parole officers and two sheriffs deputies. When Spirito answered the door, Bolden searched him, found a knife, and asked if he had any other weapons. Spirito said "there is a gun upstairs under the dresser." Two parole officers searched his bedroom and found an AR-15 rifle along with two extended magazines, each with a 30-round capacity, which are illegal in New York. Spirito was arrested and charged with possession of the magazines.

County Court denied his motion to suppress the illegal magazines, saying Bolden's "conduct was reasonably and rationally related to his duties as a parole officer, one of which is to make sure that the parolees he is supervising are not in possession of any guns. Additionally, the defendant had consented to the search by signing the standard conditions of parole which allowed for such searches." Spirito pled guilty to two counts of third-degree criminal possession of a weapon and was sentenced to four years in prison.

The Appellate Division, Third Department affirmed on a 4-1 vote. "The search of defendant's residence, which was based on the mother's tip, was rationally and reasonably related to the performance of the parole officer's duties...," it said. "The tip from defendant's mother was presumed reliable..., unlike that from an anonymous tipster.... As defendant and his mother resided together, had daily interaction, and the mother had knowledge of defendant's current mental health status, the tip was reliable. Although there is no evidence in the record as to when the picture of defendant was taken, defendant resided with the mother. As such, she was cognizant of her son's appearance, his attire and was capable of determining its chronology."

The dissenter said the magazines, the sole basis for the charges, should have been suppressed. "Even if I agreed with the majority that defendant's mother was reliable, the record nonetheless fails to demonstrate a sufficient basis for the mother's knowledge that defendant had a gun," she said. "In this regard, the only basis of the mother's knowledge stemmed from a photograph depicting defendant with a gun. There was no evidence, however, indicating when or where this photograph was taken. Moreover, even though the mother lived with defendant, there was no proof reflecting that the mother personally observed defendant with a gun, that she ever saw a gun in defendant's bedroom or that she otherwise had any firsthand knowledge that defendant had a gun...."

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State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 54 People v Eugene L. Lively

Eugene Lively was a parolee living in Watertown in February 2021, when parole officers and Watertown police officers arrived at his apartment without a warrant in search of another parolee, an absconder, who they believed was living there. Lively was handcuffed while officers searched the residence, unsuccessfully, for the absconder and a parole officer, noticing a bulge in his pocket, retrieved an ear bud container with heroin inside. He was charged with possession.

County Court denied Lively's motion to suppress the drug evidence, saying the parole officer discovered the heroin in the performance of her duties. Lively was convicted at trial of third-degree criminal possession of a controlled substance and sentenced to six years in prison.

The Appellate Division, Fourth Department affirmed in a 3-2 decision. "'A parolee's constitutional right to be secure against unreasonable searches and seizures is not violated when a parole officer conducts a warrantless search that is rationally and reasonably related to the performance of the parole officer's duties'...," the majority said. "'A parole officer's search is unlawful, however, when the parole officer is merely a conduit for doing what the police could not do otherwise'.... Here, no such improper exploitation occurred." It cited the parole officer's testimony "that the conditions of defendant's parole included a consent to searches of his person and residence; and that the unannounced home visit was prompted by a request from another parole officer to conduct the visit to look for a parole absconder who might be in defendant's residence. That conduct is unquestionably 'substantially related to the performance of [the parole officer's] duty in the particular circumstances'.... Further, there is no evidence from which to infer that the parole officers conducting the search were 'not pursuing parole-related objectives but were instead facilitating [a] police investigator's contact with defendant as part of a separate criminal investigation'...."

The dissenters said the officers were searching "defendant's home for an unidentified parolee who had apparently absconded from parole.... Importantly, there was no testimony by defendant's parole officer that the search was related to any determination that defendant violated or was violating any condition of his parole or that the parole officers were conducting an unannounced search related to defendant's status as a parolee.... Thus, there was no evidence that the decision to search defendant's residence 'was motivated ... by legitimate reasons related to <u>defendant's</u> status as a parolee'.... [W]e are unaware of any case law that stands for the proposition that a showing that a parole officer's actions were rationally related to that officer's duty to detect and prevent the parole violations of one parolee was sufficient to render a search or seizure with respect to a separate parolee reasonable." They said, "Inasmuch as the testimony ... established that the parole officers' sole purpose for entering defendant's residence was to determine whether a parole absconder was present, we conclude that the search of defendant's pocket 'was not reasonably designed to lead to evidence of a parole violation'...."

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