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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 197

SAMUEL WALKER,

Appellant,

20 Eagle Street
Albany, New York 12207
October 16, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: People v. Walker,
2 197. Counselor?

3 MS. PREVE: Good afternoon, Your Honors.
4 I'm Kristin Preve and I represent the appellant
5 Samuel Walker.

6 CHIEF JUDGE LIPPMAN: Do you want any
7 rebuttal time, counselor?

8 MS. PREVE: One minute, please.

9 CHIEF JUDGE LIPPMAN: One minute. Go
10 ahead.

11 JUDGE GRAFFEO: What's the rule that you
12 want us to adopt? What are you saying the State
13 Trooper protocol should be?

14 MS. PREVE: Well, Your Honor, I guess it
15 would be that in a situation like this, that they
16 need to determine if a person present at the scene
17 has the authority and the ability to drive the car
18 away before the impound?

19 JUDGE GRAFFEO: And whose burden is it?
20 Does the officer have to ask the other occupants of
21 the car if they have a license, or are the occupants
22 supposed to say I can drive the car away? Who has
23 the responsibility for initiating that?

24 MS. PREVE: The police have - - - should
25 have the responsibility for initiating that.

1 CHIEF JUDGE LIPPMAN: Is there anything in
2 the record to indicate that the passenger had a - - -
3 the ability to drive the car away?

4 MS. PREVE: No, there isn't, Your Honor;
5 and of course, why would there be? You know, once
6 the -- you know, police - - - the troopers have this
7 policy, once they determine that neither my client
8 nor the girlfriend was the registered owner, impound
9 the - - -

10 CHIEF JUDGE LIPPMAN: Right, but - - -

11 MS. PREVE: - - - look what happened, I
12 mean it's - - -

13 CHIEF JUDGE LIPPMAN: -- but why isn't that
14 a rational way for the police to proceed if they
15 determine that the registered owner is not there?
16 Why do they have any affirmative responsibility after
17 that? Why isn't this a perfectly appropriate policy
18 to - - - there's no registered owner. They want to
19 make sure that the car is protected, everyone's
20 protected. Why isn't this a perfectly rational,
21 reasonable way for the police to proceed?

22 MS. PREVE: Well, first of all, there are
23 all sorts of federal cases and New York State cases
24 and a State Standard - - -

25 CHIEF JUDGE LIPPMAN: Tell us what case

1 shows that they have an affirmative action - - -
2 affirmative responsibility, when there's no
3 registered owner there to go seek out either a
4 registered owner or go seek out a - - - someone who
5 could drive it away. What case says that?

6 MS. PREVE: I believe United States v.
7 Duguay and - - -

8 CHIEF JUDGE LIPPMAN: What does that say?

9 MS. PREVE: Excuse me?

10 CHIEF JUDGE LIPPMAN: What does that case
11 say?

12 MS. PREVE: Well, I think it was a similar
13 situation that - - -

14 JUDGE SMITH: No, it's not. That case - -
15 - that was a pretty extreme case. That was where
16 they arrested the passenger - - -

17 MS. PREVE: Right.

18 JUDGE SMITH: - - - and took the keys away
19 from the driver. That's getting a little extreme.
20 In this case, it was the driver they arrested.

21 MS. PREVE: That's correct, Your Honor.
22 That's correct.

23 JUDGE GRAFFEO: How were the police
24 supposed to know that the registered owner doesn't
25 want one of these - - - assuming one of these

1 passengers has a license, the registered owner may
2 not want that person driving their car? Don't the
3 police have the ability to protect themselves from
4 that liability?

5 MS. PREVE: Well, the registered owner also
6 might not want their car impounded for a variety of
7 reasons, too and - - -

8 CHIEF JUDGE LIPPMAN: Who objected to the
9 impoundment? Did anyone object to the impoundment?

10 MS. PREVE: No, Your Honor. And I think it
11 would have been a little unrealistic to expect that
12 the occupants of the car to object. You know, if the
13 police are saying, you know, we're going to tow the
14 car, I don't know - - -

15 JUDGE SMITH: Well, is it so much - - - I
16 mean, why couldn't he - - - why couldn't your client
17 have just said politely, actually, this is my
18 girlfriend. She's got a license and she didn't do
19 anything wrong. Is it okay if she drives it away?

20 MS. PREVE: He could have, Your Honor, but
21 we - - -

22 JUDGE SMITH: And that would be a much
23 different case, wouldn't it, if you had had some
24 perfectly reasonable request like that and the police
25 had said no.

1 MS. PREVE: I disagree respectfully, Your
2 Honor, because, you know, their policy is so rigid
3 that, you know, the registered owner isn't there on
4 the scene - - -

5 JUDGE SMITH: You say they would have said
6 no. But it's one thing - - - you're putting the
7 burden on them - - - on the police to say okay,
8 anybody here who can drive the car.

9 MS. PREVE: Yes, Your Honor. And I believe
10 actually the New York State legislature kind of
11 imposes that same burden. In one instance, the
12 statute has cited Vehicle and Traffic Law 511(b)
13 indicates that the police are to impound when there's
14 an arrest for aggravated unlicensed operation of a
15 vehicle in the first and second degrees, I believe,
16 but only if an authorized person isn't available at
17 the scene to drive the car away. So I think in that
18 instance they are imposing - - -

19 JUDGE SMITH: Properly licensed - - -

20 MS. PREVE: - - - the duty on the police to
21 determine who operates - - -

22 JUDGE SMITH: - - - properly licensed and
23 authorized. Either the - - - if you have someone
24 that - - - assume the girlfriend is properly
25 licensed, how are they supposed to know whether she's

1 authorized to possess and operate the vehicle which
2 isn't hers?

3 MS. PREVE: Well I think first of all, they
4 could ask her. It's their policy - - - their policy
5 doesn't even provide for that. They could ask her,
6 well what's your relationship to the - - -

7 JUDGE READ: She could say - - -

8 MS. PREVE: - - - driver, what's your
9 relationship to the owner. And, you know - - -

10 JUDGE READ: - - - she could say fine, you
11 know, I can - - - but how do they know it's not
12 stolen? How do they know she's not lying?

13 MS. PREVE: Well in terms - - - there was
14 no indication that this vehicle was stolen. I
15 understand that they - - - the police can check to
16 see whether it was stolen.

17 JUDGE GRAFFEO: No, but she could have
18 driven away and had an accident and then the owner of
19 the vehicle would make a claim against the state
20 police for allowing her to drive off in the vehicle.

21 MS. PREVE: Well, Your Honor, I was unable
22 to find any case like that, at least from New York
23 State. And also, it appears that it's not a problem
24 with - - - many police departments have the same rule
25 that they - - -

1 CHIEF JUDGE LIPPMAN: Yeah, but you're
2 saying in effect the only way they could really know
3 is by reaching out and trying to find the registered
4 owner. But are there any other cases that say that's
5 their responsibility, to see whether there's
6 permission for this other person to drive the car
7 away?

8 MS. PREVE: Well, I guess if they had a
9 genuine - - -

10 CHIEF JUDGE LIPPMAN: The typical situation
11 would be if you're the registered owner and you're
12 right there and then you say, oh, here's my
13 passenger. She'll take the car home or he'll take
14 the car home. That's the typical situation, right?

15 MS. PREVE: Right.

16 CHIEF JUDGE LIPPMAN: Where it's not that
17 typical situation, what would lead us to conclude
18 that the police have responsibility to go seek out
19 the registered owner because that's the only way
20 they're going to know whether it's okay for this
21 other person to drive the car away, right? Is there
22 any other way they could know?

23 MS. PREVE: Well if they - - - if they have
24 a legitimate doubt as to whether the person would
25 have - - - you know, be authorized that - - -

1 CHIEF JUDGE LIPPMAN: If there's no
2 registered owner there, how could they not have a
3 legitimate doubt, unless the relationship was so
4 clear or whatever it was that unmistakably told them
5 that the person had - - - like if the registered
6 owner was the person that was stopped, you know, was
7 the driver. But absent that, you know, why weren't
8 they doing exactly the right thing to protect
9 everybody by impounding the car?

10 MS. PREVE: Well - - -

11 CHIEF JUDGE LIPPMAN: And the only other
12 way they could avoid that is to go say hold it, we're
13 going to make a search around the area to see, you
14 know - - - call - - - try and call the registered
15 owner, try and find out where they live. That's not
16 realistic, is it?

17 MS. PREVE: Once again, respectfully, we
18 disagree. We're not saying that they have to - - -

19 CHIEF JUDGE LIPPMAN: In what sense do you
20 disagree?

21 MS. PREVE: - - - actually - - - excuse me?

22 CHIEF JUDGE LIPPMAN: In what sense do you
23 disagree?

24 JUDGE READ: Do you think it's practical?

25 MS. PREVE: Yes, Your Honor. I think it's

1 practical, and if they have a legitimate doubt as to
2 whether somebody is authorized, they could try - - -
3 attempt to contact the owner.

4 JUDGE GRAFFEO: Yeah, but then you get into
5 - - -

6 MS. PREVE: Like if they have a cell phone
7 - - -

8 JUDGE GRAFFEO: - - - then you get into a
9 whole 'nother realm of issues, which is, who do they
10 have to call? How long do they have to wait for a
11 callback? How do they know the person they're
12 talking to on the phone is actually the registered
13 owner? It doesn't really diminish their liability,
14 does it?

15 MS. PREVE: In terms of their liability, I
16 mean I think it - - - once again, I wasn't able to
17 find a case where the police were ever held liable
18 for a negligent failure to impound.

19 And in terms of - - - oh, excuse me, I lost
20 my train of thought. In terms of like insurance
21 coverage, I don't think it's a problem because as I
22 said, I did cite another statute to the Court,
23 Vehicle and Traffic Law Section 388 which talks about
24 insurance coverage.

25 CHIEF JUDGE LIPPMAN: But do you know what,

1 counsel?

2 MS. PREVE: - - - I think that's a very
3 valid concern which - - -

4 CHIEF JUDGE LIPPMAN: But I think what
5 we're talking about here is common sense. I don't
6 know how the police could just, you know, turn over
7 the car without knowing anything about - - - again,
8 if I'm the driver and the registered owner and I say,
9 gee, you know, my passenger will take it home, okay.

10 But doesn't common sense tell you that it
11 would be a mistake for the police to just, you know,
12 give this car to the passenger and say you deal with
13 it? You know what I mean? It doesn't seem to
14 comport with practical considerations of protecting
15 the owner, protecting themselves, knowing what, you
16 know, what the story is, with the car. Isn't it
17 safer to just impound the car - - -

18 MS. PREVE: Well - - -

19 CHIEF JUDGE LIPPMAN: - - - for all
20 concerned?

21 MS. PREVE: A policy like the trooper's
22 have is - - - doesn't even take what the owner wants,
23 the registered owner wants necessarily into
24 consideration.

25 JUDGE SMITH: Why don't you - - - can you

1 spend just a - - - since you're almost out of time,
2 spend a minute on whether this was a legitimate
3 inventory search or not. Assume the impoundment was
4 proper, is there a problem with the search?

5 MS. PREVE: Your Honor, the trooper didn't
6 testify as to what the actual substantive search
7 policy of the police or the state troopers was, and
8 the document - - -

9 JUDGE CIPARICK: He didn't offer any
10 written policy but he did testify as to what the
11 policy was.

12 MS. PREVE: Well he said that they take
13 down the name of the - - - and make of the car but it
14 didn't have anything to do with the substantive issue
15 in terms of what types of containers they can search,
16 whether they can search this area or that area.
17 There was nothing like that. It was just in the
18 mechanical - - - you know, take down the - - - they
19 said the model and make of the car and that type of
20 thing, and it didn't really produce a usable
21 inventory because it was just so not specific. It
22 said, you know, miscellaneous items: gun. And we
23 submit that that was - - -

24 JUDGE CIPARICK: So it doesn't comply with
25 Johnson and that line of cases. Is that what you're

1 saying?

2 CHIEF JUDGE LIPPMAN: Okay, counsel.

3 Thanks.

4 JUDGE READ: Why don't you - - -

5 CHIEF JUDGE LIPPMAN: Counsel?

6 JUDGE READ: - - - why don't you start off
7 where she left off? What about the inventory search?

8 MS. SMALL: I believe it was a reasonable
9 inventory search and it should be upheld. The - - -
10 it's a reasonableness standard that is applied when
11 looking at an inventory and it must be reasonable in
12 scope and it must be conducted in accordance with
13 standard departmental procedures. We have - - -

14 JUDGE SMITH: What are those standard
15 departmental procedures?

16 MS. SMALL: The departmental procedures
17 must be written, in which case we do have testimony -
18 - -

19 JUDGE SMITH: No, in this case. Well, you
20 see he said they written. Did anyone ever come up
21 with a copy?

22 MS. SMALL: No, Your Honor, it was not
23 admitted into evidence. However, there was no
24 objection at the hearing. Therefore, that issue is
25 unreserved for Your Honors.

1 JUDGE SMITH: Okay.

2 JUDGE GRAFFEO: How did the Court know what
3 the written policy was though?

4 MS. SMALL: There was testimony from the
5 trooper as to what the procedures were and that they
6 were, in fact, followed.

7 JUDGE SMITH: But I mean - - - I have the
8 same problem your adversary had with that. I mean,
9 there's testimony, except it doesn't say anything
10 about searching. It talks about taking names and
11 make and model and what - - -

12 MS. SMALL: It was with reference to the
13 form that was filled out in accordance with those
14 policies that the trooper was following with respect
15 to the inventory search.

16 JUDGE PIGOTT: The law says first and
17 second degree, and this is a third, right?

18 MS. SMALL: Yes, Your Honor.

19 JUDGE PIGOTT: So there wasn't even a
20 requirement that there be an impounding, would you
21 agree?

22 MS. SMALL: In accordance with the
23 trooper's - - -

24 JUDGE PIGOTT: No, forget that. I'm
25 talking about the statute. 511 says if it's first or

1 second, you impound, unless and then it gives you all
2 the - - - you know, unless the registered owner is
3 there, et cetera.

4 MS. SMALL: Yes.

5 JUDGE PIGOTT: So this is a situation where
6 there's broad discretion in the police department, I
7 would assume.

8 MS. SMALL: There is no discretion. I
9 mean, the troopers did testify that this was the - -
10 -

11 JUDGE PIGOTT: Are you saying that in every
12 - - - in every seatbelt case where the situation like
13 this arises, they haul the car in?

14 MS. SMALL: No.

15 JUDGE PIGOTT: I don't think that's true at
16 all.

17 MS. SMALL: This is a unique circumstance.

18 JUDGE PIGOTT: That's what I suggested - -
19 -

20 MS. SMALL: This is a very narrow
21 exception.

22 JUDGE PIGOTT: - - - it's discretionary.
23 And in this situation you had an unlicensed - - - you
24 had an unbelted passenger and that led to this. And
25 it seems to me that a reasonable argument could be

1 made that having given - - - been given certain
2 discretion, the discretion that led to the
3 impoundment of this car could be arbitrary and/or
4 capricious, since as Ms. Preve points out, no one
5 made a - - - it was the sister's car, right, of the
6 driver?

7 MS. SMALL: That's correct.

8 JUDGE PIGOTT: No one went any further than
9 that. This - - the - - Ms. June and the driver had
10 been together for over three years, had two kids
11 together. Nobody made any attempt to do anything
12 other than impound this car, even though it's
13 discretionary, and the protocol seemed to indicate
14 that if a car is in a place of - - - you know, where
15 it could be a danger, you know, if it's on the side
16 of a road or something; and this is in a parking lot
17 of a grocery store.

18 MS. SMALL: Your Honor, I would
19 respectfully disagree with respect to your argument
20 that it was discretionary. Here, the trooper was
21 following a policy. They made a proper stop of the
22 vehicle and then they - - -

23 CHIEF JUDGE LIPPMAN: Doesn't it matter
24 where the car is? Is it of no relevance that it was
25 in a parking lot?

1 MS. SMALL: It wasn't in a public parking
2 lot, Your Honor. However, the Supreme Court has
3 stated that a distinction of whether it's a busy or
4 non-busy street, it's a distinction without a
5 difference.

6 JUDGE PIGOTT: But are you suggesting that
7 if the police officer had heard from the driver
8 and/or the passenger, this is my sister's car, this
9 is my girlfriend. She can take it home, that he'd
10 say, I'm sorry. You know, I can't do that. I've got
11 to impound the car?

12 MS. SMALL: That - - -

13 JUDGE PIGOTT: And then they call, you
14 know, the sister who says, that's my - - - you know,
15 that's my brother and that's my sister-in-law and
16 absolutely they can drive the car home. That they
17 would impound it in all those circumstances?

18 MS. SMALL: If there was a phone call, you
19 would have to be able to verify that that was, in
20 fact, the registered owner. This is part of the - -
21 -

22 JUDGE SMITH: Well, could - - -

23 MS. SMALL: - - - impracticality.

24 JUDGE SMITH: - - - well shouldn't - - -
25 couldn't - - - shouldn't the police have assumed at

1 least that the driver was in lawful possession of the
2 car? They checked. It wasn't stolen and he's - - -

3 MS. SMALL: That is correct, Your Honor.
4 However, unless that authorized - - - or excuse me -
5 - -

6 JUDGE SMITH: Doesn't that authorized
7 possession carry with it, the authority to grant
8 somebody else the right to possess the car?

9 MS. SMALL: Your Honor, the defendant did
10 bring to the court's attention, on a last minute
11 submission. However those - - - that statute, on the
12 Vehicle Traffic Law and those cases are with regard
13 to civil liability only. I would argue that - - -

14 JUDGE SMITH: Well is it not a general rule
15 that if I'm driving my wife's car, I'm free to let my
16 brother drive it?

17 MS. SMALL: Are you a registered owner?

18 JUDGE SMITH: No, she is. It's her car.

19 MS. SMALL: I - - -

20 JUDGE SMITH: I'm driving.

21 MS. SMALL: - - - I would argue no, unless
22 that - - -

23 JUDGE PIGOTT: Really? Really?

24 MS. SMALL: Unless the - - - the
25 authorization should be coming from a direct source

1 from - - -

2 JUDGE PIGOTT: If my wife has got title to
3 my car and I let my son drive it, he's driving
4 without insurance?

5 MS. SMALL: I'm sorry, I don't follow.

6 JUDGE PIGOTT: Well you're saying that if
7 my son didn't contact my wife to say, can I drive
8 your car, mom; Dad says, you know, I can do it - - -

9 MS. SMALL: What I'm saying is that - - -

10 JUDGE PIGOTT: - - - that somehow there's -
11 - -

12 MS. SMALL: - - - the policy as it's - - -

13 JUDGE PIGOTT: - - - therefore non-
14 permissive use and therefore no insurance?

15 MS. SMALL: The policy as it's laid out is
16 put in place to diminish officers' discretion. That
17 is exactly what this policy was designed to implement
18 and that is exactly what is accomplished.

19 JUDGE PIGOTT: Why isn't 3 in 511 then? I
20 mean why is it first and second and not third?

21 MS. SMALL: That I can't answer, Your
22 Honor. However, that - - -

23 JUDGE PIGOTT: Well, wouldn't it imply that
24 - - -

25 MS. SMALL: - - - that sort of intent can

1 be implied.

2 JUDGE PIGOTT: - - - it's mandatory under
3 one and two and it's not mandatory under three - - -
4 AU03?

5 MS. SMALL: I'm not sure what was behind
6 their thought process there. However, I would - - -
7 I believe that it is applicable. You do have to have
8 a licensed, authorized person; both of those
9 components. They must, you know, have that - - -
10 they must possess a valid license and they must have
11 that authorization from the registered owner.

12 CHIEF JUDGE LIPPMAN: If this policy is so
13 rigid and there's no discretion whatsoever, wouldn't
14 it then require that we see the policy? In other
15 words, if it's just a vague, general policy and okay,
16 but in this case if you're saying there's no
17 discretion whatsoever, wouldn't we need to have that
18 policy on the record - - -

19 MS. SMALL: Your Honor - - -

20 CHIEF JUDGE LIPPMAN: - - - in evidence?

21 MS. SMALL: - - - it would be helpful, yes.
22 However, those are not the circumstances of this
23 case.

24 CHIEF JUDGE LIPPMAN: But isn't your
25 argument, make it very helpful or necessary really?

1 MS. SMALL: Yes.

2 CHIEF JUDGE LIPPMAN: And it wasn't there,
3 right?

4 MS. SMALL: It was not. However, the
5 testimony - - -

6 CHIEF JUDGE LIPPMAN: No, no, but - - -

7 MS. SMALL: - - - the testimony of the
8 trooper - - -

9 CHIEF JUDGE LIPPMAN: - - - but my point is
10 if you're arguing so strongly that there's no
11 discretion, it's a rigid policy, then I don't
12 necessarily know how you can argue well, then we
13 don't need to see it, there could just be some
14 general testimony about it. You know what I mean?
15 They're almost mutually inconsistent.

16 MS. SMALL: Those are the circumstances of
17 this case, Your Honor.

18 CHIEF JUDGE LIPPMAN: Okay.

19 JUDGE SMITH: Well, how can it be - - -
20 switching for a moment, how can it be a useable inven
21 - - - how could a useable inventory have only - - -
22 have no entries on it except for the contraband,
23 miscellaneous items and paperwork? What good is that
24 as an inventory?

25 MS. SMALL: Your Honor, this court has held

1 that the point of an inventory form is to create a
2 usable inventory, and that is without unnecessarily
3 hamstringing the police in their duties.

4 JUDGE SMITH: But how do you use an
5 inventory? I mean if the point - - - if the purpose
6 is you can prove later that all the items that were
7 in the car were returned to him, how does
8 "miscellaneous items" do that?

9 MS. SMALL: Your Honor, by listing - - -
10 there's three areas on the form which can be
11 searched; and they did indicate the items that were,
12 you know, found in each of those areas. They
13 described in detail - - -

14 JUDGE SMITH: But we don't know - - - we
15 don't know whether it was a diamond ring or a comic
16 book.

17 MS. SMALL: If they were of value, that's
18 the purpose for taking the inventory. If it was of
19 value, they probably would have described it in
20 detail.

21 JUDGE SMITH: How are we supposed from
22 looking at that inventory whether there was anything
23 of value or not?

24 MS. SMALL: Well those items were, in fact,
25 returned to the owner. So they were, you know, given

1 back to the owner - - -

2 JUDGE SMITH: I see. If they're valuable,
3 you keep them?

4 MS. SMALL: No, they would have been left
5 in the vehicle, which was what was indicated on this
6 form. They recovered the gun from the body of the
7 car; and they indicated that the miscellaneous items
8 were in the trunk and the paperwork was in the glove
9 box. To go into any greater detail - - -

10 JUDGE SMITH: That's what I'm - - -

11 MS. SMALL: - - - would be a greater
12 invasion of privacy.

13 JUDGE SMITH: - - - so if you open the
14 trunk and there's a mink coat, you close it again.
15 But if it's just an ordinary jacket, you hand it to
16 the guy who is wearing it? And that's what this
17 written policy would say if we saw it?

18 MS. SMALL: Your Honor, I'm sure those
19 items would have been delineated in accordance with
20 that policy. However, that is not the case here.

21 CHIEF JUDGE LIPPMAN: Okay, counsel.
22 Thanks.

23 MS. SMALL: Thank you.

24 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

25 MS. PREVE: Unless the Court has any other

1 questions - - -

2 JUDGE PIGOTT: Would it have helped if Ms.
3 June, when she testified at the suppression hearing,
4 had said she had a valid New York State driver's
5 license?

6 MS. PREVE: Was the first part of that,
7 wouldn't it have been helpful?

8 JUDGE PIGOTT: Yeah.

9 MS. PREVE: Is that what you said? It
10 certainly would have, Your Honor. It certainly would
11 have. On the other hand, if the police had
12 questioned her and found out that she was - - -

13 CHIEF JUDGE LIPPMAN: Your argument is it's
14 the police's responsibility to check that out,
15 period.

16 MS. PREVE: Yes.

17 CHIEF JUDGE LIPPMAN: They have to know and
18 you're saying the burden's on them.

19 MS. PREVE: Yes, Your Honor.

20 CHIEF JUDGE LIPPMAN: Okay. Thanks.

21 MS. PREVE: That - - -

22 CHIEF JUDGE LIPPMAN: I'm sorry, go ahead.

23 MS. PREVE: Okay. I'll just leave you with
24 this. If the police are in such a hurry that they
25 can't be troubled to make a phone call in the case,

1 if they had a legitimate doubt about authorization,
2 why do they always have the time to wait for the tow
3 truck?

4 CHIEF JUDGE LIPPMAN: Okay. Thanks,
5 counsel. Thank you both.

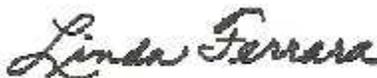
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C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript of proceedings in the Court of Appeals of PEOPLE v. SAMUEL WALKER, No. 197 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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