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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

No. 205

MIGUEL GARCIA,

Respondent.

20 Eagle Street
Albany, New York 12207
October 18, 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: 205, People v.
2 Garcia.

3 Counselor, would you like any rebuttal
4 time?

5 MR. KAPLAN: Two minutes, please, Your
6 Honor.

7 CHIEF JUDGE LIPPMAN: Hold on one second.
8 Okay.

9 MR. KAPLAN: Excuse me, Your Honor?

10 CHIEF JUDGE LIPPMAN: Go ahead.

11 MR. KAPLAN: Thank you. May it please the
12 court, Stanley Kaplan, for People, appellant.

13 Your Honors, I'm asking the court to
14 consider a narrow legal issue, something that is
15 within the purview of the court in its role to set
16 standards. We believe that if it's permissible under
17 Robinson and McLaurin to order occupants out on a
18 local traffic stop, it should be permissible - - -

19 CHIEF JUDGE LIPPMAN: Counselor, in our
20 state, why doesn't De Bour apply to normal traffic
21 stops? Given the common law in this state, why is it
22 not a given that De Bour applies?

23 MR. KAPLAN: I believe that is an open
24 question that was left open in Turriago because it
25 was on a preserved argument. I think the purpose in

1 Turriag - - the De Bour/Hollman paradigm scenario is
2 different. This is something in which it is not a
3 question of a graded approach by police to citizens
4 in a street encounter in which a question may be how
5 much information do they have already through a tip,
6 what do they see that's discernible in the way of a
7 bulge.

8 JUDGE CIPARICK: So why is it different?
9 Because of the dangerousness of the - - -

10 MR. KAPLAN: It's different because of the
11 inherent dangerousness. We have a level - - -

12 JUDGE CIPARICK: The fact that they can
13 flee because they were in an automobile?

14 MR. KAPLAN: Well, they could flee, but
15 what the real danger is that, to use Hollman or De
16 Bour language, we have, in effect, a level 3 stop;
17 they're taking out of the stream of traffic based on
18 the traffic stop. They are - - - the officer must be
19 in proximity during the pendency of that stop and the
20 processing - - -

21 JUDGE PIGOTT: The two courts so far have
22 said nervousness does not equal founded suspicion.
23 You're -- are you asking for - - - that in any case
24 involving a car at night or under certain
25 circumstances, nervousness and/or furtive action is

1 enough?

2 MR. KAPLAN: We are not using any
3 particular factual determinate other than there has
4 been a lawful traffic stop in which you have - - -

5 JUDGE SMITH: You're saying you don't need
6 founded suspicion.

7 MR. KAPLAN: That's correct.

8 JUDGE SMITH: You don't need anything; you
9 can ask him any question you want once you've stopped
10 him?

11 MR. KAPLAN: Not any question you want, no.
12 I would say that you could not ask, for example, do
13 you have contraband, because that's an investigative
14 question which is closer to the Hollman/De Bour - - -

15 CHIEF JUDGE LIPPMAN: What's the policy
16 rationale for not requiring a founded suspicion for a
17 routine traffic violation?

18 MR. KAPLAN: The reason we feel that it's
19 important is because if, as it is the case, it is
20 lawful for an officer to stop a vehicle under these
21 circumstances and to order out not only the driver
22 but the passengers, we feel that in order to
23 facilitate the officer's doing that, it is
24 particularly dangerous when they approach those who
25 are already - - - who are in the car until they are

1 out of the car, that they should be permitted to ask
2 this one question: do you have a weapon?

3 JUDGE PIGOTT: That's it?

4 MR. KAPLAN: Yes.

5 JUDGE PIGOTT: That's the beginning and end
6 of the - - - I shouldn't say and end, but that's the
7 only question you're worried about, that you're
8 concerned about?

9 MR. KAPLAN: That is the only question.
10 This is a very narrow - - -

11 JUDGE GRAFFEO: If we - - -

12 JUDGE SMITH: Wouldn't the logic - - -
13 sorry.

14 JUDGE GRAFFEO: If we disagree with you and
15 feel that De Bour applies, does this case have a
16 founded suspicion?

17 MR. KAPLAN: Well, we argued below that
18 there was nervousness, but I don't want to turn this
19 case into a question concerning how much nervousness
20 - - -

21 CHIEF JUDGE LIPPMAN: Or is that a mixed
22 question?

23 MR. KAPLAN: That's a - - - that would be a
24 mixed question, and that's not why we're here.

25 CHIEF JUDGE LIPPMAN: If De Bour applies,

1 mixed question, finished, end of case?

2 MR. KAPLAN: If - - - well, if De Bour - -
3 - if that is the standard, that still would be a
4 legal question, this court would have to, because
5 that was not decided - - -

6 CHIEF JUDGE LIPPMAN: Why isn't it a mixed
7 question? If De Bour applies - - -

8 MR. KAPLAN: Because - - -

9 CHIEF JUDGE LIPPMAN: I'm saying assume
10 that premise, why isn't it then a mixed question?

11 MR. KAPLAN: Well, this court would still
12 have to determine, as a legal basis, whether the line
13 of cases under De Bour and Hollman apply. If they -
14 - - if this court makes the legal determination - - -

15 CHIEF JUDGE LIPPMAN: Yes, that's what I'm
16 saying, that De Bour applies.

17 MR. KAPLAN: If it does make a
18 determination - - -

19 CHIEF JUDGE LIPPMAN: Then it's a mixed
20 question.

21 MR. KAPLAN: - - - then it would be a mixed
22 question - - -

23 CHIEF JUDGE LIPPMAN: Okay.

24 MR. KAPLAN: - - - and that would end the
25 matter. But we're asking this court - - -

1 CHIEF JUDGE LIPPMAN: Right.

2 MR. KAPLAN: - - - to carve out - - - not
3 to - - -

4 JUDGE SMITH: Wouldn't the logic of your
5 argument support a broader role that, if they've - -
6 - if you've had a level 3 stop - - -

7 MR. KAPLAN: Um-hum.

8 JUDGE SMITH: - - - and you've already
9 interrupted these people's travel and you can order
10 them out of the car, what's so terrible about asking
11 them whether they got contraband?

12 MR. KAPLAN: Because it's really the
13 purpose of the question, Your Honor; it's not
14 investigative. That's why it's different from the
15 Hollman/De Bour's paradigm or scenario.

16 JUDGE SMITH: It's not against the law for
17 police to investigate.

18 MR. KAPLAN: It's not. It's not, but in
19 the circumstance in which you have the Hollman/De
20 Bour, the way that law has developed, we view
21 gradations, we view situations in which people are on
22 the street - - -

23 JUDGE PIGOTT: What about the beginning,
24 Mr. Kaplan, of the - - -

25 MR. KAPLAN: Yes, Your Honor.

1 JUDGE PIGOTT: - - - of the, you say, valid
2 traffic stop?

3 MR. KAPLAN: Yes.

4 JUDGE PIGOTT: And this one was a brake
5 light?

6 MR. KAPLAN: It was a defective brake
7 light.

8 JUDGE PIGOTT: Then you have the no seat
9 belt on one of the pass - - - in any and all of those
10 situations, is it - - - you have no problem with that
11 stop and then asking these questions?

12 MR. KAPLAN: As long as there is a right to
13 stop the car, the fundamental situation remains,
14 which is that you have driver and occupants seated,
15 shielded within a vehicle.

16 JUDGE PIGOTT: Don't you get concerned
17 about pretext in situations like that?

18 MR. KAPLAN: Robinson should - - - the
19 second Robinson, the one involving Whren, should
20 dispose of that issue. It's not a question of the
21 officer's intent; it's a question of do they have a
22 right to stop the vehicle because they foresee a
23 traffic infraction, if it is a legitimate tra - - -

24 JUDGE SMITH: Well, maybe the concern is
25 that - - -

1 MR. KAPLAN: Yes.

2 JUDGE SMITH: - - - we made the decision in
3 Robinson that we're willing to take the risk of
4 officers stopping people on pretext.

5 MR. KAPLAN: Yes.

6 JUDGE SMITH: But aren't you - - - but if
7 you're letting them ask questions after they stop,
8 aren't you augmenting the temptation to abuse, I
9 mean, every time you see somebody without a seat belt
10 you stop the car.

11 MR. KAPLAN: No.

12 JUDGE SMITH: At least somebody who looks
13 like a drug dealer to you?

14 MR. KAPLAN: I wouldn't speculate as to
15 that. Here we have a situation in which there was a
16 legitimate traffic stop.

17 JUDGE PIGOTT: Yeah, but upstate we have
18 DWI stops; in other words, all of a sudden, you drive
19 up and there's a - - -

20 MR. KAPLAN: Yes.

21 JUDGE PIGOTT: - - - whole line;
22 everybody's getting stopped.

23 MR. KAPLAN: Yes.

24 JUDGE PIGOTT: No problem there?

25 MR. KAPLAN: Well, I don't know; we're not

1 the case of legitimate but - - - legitimate stops in
2 which the passenger has not done anything - - - in
3 which the occupants of the car have done nothing
4 wrong.

5 MR. KAPLAN: Well, if there is no basis - -
6 - if there is no indicia of a traffic violation, if
7 there's no indicia, if there's no defective brake
8 light, lack of wearing a shoulder belt, the various
9 criteria, that may be another situation, but here we
10 have that. And here we have a situation, and the
11 officer must be in proximity here to five individuals
12 in a car. And in this circumstance, it is - - - this
13 court has indicated, and the Supreme Court, that
14 where occupants remain in a car, that exposes the
15 officer to the greatest danger. So here, if this one
16 question can facilitate the promotion of a safe
17 processing of - - -

18 JUDGE PIGOTT: Let me give you another - -
19 -

20 JUDGE READ: That's assuming the question's
21 answer truthfully, right, and there's no - - - there
22 is no - - -

23 MR. KAPLAN: Well, they might lie. They
24 might say they don't have, and we would - - - and the
25 officer would have to accept that. If the officer

1 didn't believe that, for some reason, he could order
2 them out, which he'd have a right to do, and then
3 could see if there was any discernible bulge in a
4 pocket.

5 JUDGE PIGOTT: I'm going to try to make it
6 harder on you.

7 MR. KAPLAN: Okay.

8 JUDGE PIGOTT: You pull the car over for
9 exactly the same reason you just did, only one
10 person's in the car.

11 MR. KAPLAN: Yes.

12 JUDGE PIGOTT: The officer said "hands on
13 the wheel." Can he ask, do you have any weapons?

14 MR. KAPLAN: I still believe that it is so
15 dangerous that that one question should be permitted,
16 because he could still order that individual out,
17 whether it's the driver alone, as we know he
18 certainly can and, then as the case law developed,
19 the occupant.

20 If we look at actually what transpired, the
21 police can ask an officer - - - the driver to open
22 the glove box of the car. In so doing, he may
23 inadvertently reveal some contraband that's in there,
24 but that can't be helped; the officer has a right to
25 ask this question. The officer has a right to ask

1 the origin and the destination of the trip which, to
2 some, may feel intrusive.

3 CHIEF JUDGE LIPPMAN: Counselor, in this
4 case, the defendants were polite, right? I mean, we
5 think these may be the kind of people that not
6 necessarily you would want to be subject to?

7 MR. KAPLAN: That may or may not be, but
8 that - - - our point is - - -

9 CHIEF JUDGE LIPPMAN: They were polite
10 here, right?

11 MR. KAPLAN: Well - - -

12 CHIEF JUDGE LIPPMAN: As far as we know?

13 MR. KAPLAN: Well, it turns out this case
14 demonstrates there was a candid response that in this
15 case - - -

16 JUDGE CIPARICK: One offered up a knife,
17 right? One offered up a knife.

18 MR. KAPLAN: That's it, exactly. So the
19 fact that someone might lie is certainly possible,
20 but this case belies the fact that that would be
21 endemic to call cases because here there was a candid
22 response, and what happened as a result of it? The
23 offi - - - this gentleman was not prosecuted for
24 having the knife. Instead, the officer was able to
25 maintain control of the knife by saying, put it on

1 the floor of the car, put your hands where I can see
2 them, and then he ordered them out. But again, he
3 was not prosecuted. Only when they were ordered out
4 that they saw a gun in the well.

5 Now, again, privacy, we recognize, is
6 important, and in searches certainly that may be an
7 area of the De Bour/Hollman aspect - - -

8 JUDGE PIGOTT: What about - - -

9 MR. KAPLAN: - - - of the law as in
10 Battaglia, for example.

11 JUDGE PIGOTT: It goes through my mind as
12 we were looking at this case, there's a lot of
13 discussion now, particularly down in the city about
14 stop and frisks and - - - are we doing the same thing
15 in autos now? I mean, if we say that anytime you can
16 stop a car and you can order everybody out and you
17 can ask if there are any weapons. I mean, are we
18 just going to end up with outcries about every car
19 that's getting stopped on pretense and - - -

20 MR. KAPLAN: Well, all I know is that
21 whether it's an elderly couple, whether it's five
22 people in a car, whether it's 9 in the morning,
23 whether it's 10 at night, the law gives the officer
24 the right, under the cases of Supreme Court and this
25 court's cases, to order the individual out. And if

1 they can do that under these circumstances without
2 respect to these specific variances, then they should
3 be able to ask one question. Now, whether they will
4 do that in all circumstances - - -

5 JUDGE READ: Well, we have - - -

6 MR. KAPLAN: - - - I don't know.

7 JUDGE READ: We have with De Bour; I guess
8 it's been around for a while - - -

9 MR. KAPLAN: Certainly.

10 JUDGE READ: - - - and people understand
11 it. Aren't we now just opening up an additional
12 potential line of litigation about which question you
13 can ask under which circumstances?

14 MR. KAPLAN: I don't - - -

15 JUDGE READ: Why wouldn't we just stick
16 with the rule that we have?

17 MR. KAPLAN: I don't believe so, because I
18 think it's dangerous to leave it this way. I think
19 this is something which augments the safety of the
20 officer but does not rule out - - - as I was saying a
21 moment ago, there could be, although this case
22 doesn't turn on this, whether this is litigated in a
23 future instance, but the interface of De Bour and
24 Hollman and traffic stops in all respects certainly
25 asking, as in Battaglia, whether or not you can

1 search the vehicle, and many cases where there are
2 questions about weapon go on to say, do you mind if I
3 search your car. Now, that could be something where
4 without a basis for it would not be proper because
5 you're now going beyond it. We're not advocating for
6 that in this case. All we're saying is, on this very
7 narrow limited basis, that - - -

8 JUDGE JONES: But can't you appreciate that
9 the answer to that question might directly lead to
10 criminal charges - - -

11 MR. KAPLAN: It could, it could, but - - -

12 JUDGE JONES: - - - as opposed to, say,
13 stepping out of the car?

14 MR. KAPLAN: Well - - - but opening a car
15 door, under David L., led to the awareness of a gun
16 in the well of the vehicle which turned out to be
17 less than pleasant for that passenger.

18 So, I mean, these are circumstances in
19 which there are already rights given to officers
20 which could have potentially criminal effects for a
21 defendant. But simply because that is the case does
22 not mean that, since an officer's question is not
23 designed to elicit incriminating information but
24 nonetheless it may happen through the answer, it
25 shouldn't be ruled out of bounds, because otherwise

1 protecting? These are people whose lives have
2 already been disrupted by a traffic stop. Why isn't
3 it okay to ask them if they got weapons? What injury
4 are they suffering?

5 MR. KOCH: The interest is the very
6 interest outlined in De Bour and issued in Hollman of
7 keeping your information private. The interest that
8 has been impaired when they're stopped is they can't
9 move anymore; they can't leave. But they're not
10 affirmatively obligated to disclose any information
11 by virtue of that stop. And that's essentially what
12 the prosecution is asking to change here is a traffic
13 stop; all of a sudden they're required to disclose,
14 well, as you yourself structured, Your Honor,
15 possibly the entire breadth of what could be subject
16 to common-law inquiry.

17 JUDGE JONES: Counselor, if we decide that
18 this was a mixed question, is that the end of this
19 appeal?

20 MR. KOCH: Yes. If, as we contend, this is
21 a mixed question where the Appellate Division simply
22 appropriately applied De Bour and Hollman, then the
23 appeal is over.

24 JUDGE GRAFFEO: If we have a different fact
25 pattern and we have the traffic stop for the same

1 reasons in this case and the officer asks the driver
2 and the passengers to leave the vehicle, and then the
3 officer sees a gun, would that be appropriate under
4 De Bour?

5 MR. KOCH: Absolutely. There, the officer
6 has - - -

7 JUDGE GRAFFEO: It's the affirmative
8 question that you have - - -

9 MR. KOCH: Absolutely.

10 JUDGE GRAFFEO: - - - the problem with.

11 MR. KOCH: Absolutely. There, the officer
12 has exercised the Mimms, Robinson, McLaurin right and
13 then seen information that gave rise to a founded
14 suspicion; it's an entirely different progression
15 which is contemplated by this court in De Bour and
16 Hollman.

17 JUDGE GRAFFEO: Of course, in that
18 scenario, the officer then wouldn't have found out
19 about the knife.

20 MR. KOCH: True. And the knife was not
21 illegal. There were no charges brought about the
22 knife. That doesn't seem - - - that seems to be a
23 good result under the interests that New York State
24 puts to protecting private information. It's not
25 clear whether the officer had any right to know about

1 the knife, which was from polite and compliant
2 individuals.

3 JUDGE SMITH: Well, of course, we - - - I
4 mean, private citizens can ask questions about things
5 they have no right to know all the time, but you said
6 that when a police officer is not entitled generally
7 to ask a question unless he has a right - - - unless
8 the information is something he has a right to the
9 answer?

10 MR. KOCH: Absolutely. And not just me;
11 Judge Wachtler, this court said it first in De Bour
12 and reiterated it in Hollman that because people feel
13 obligated to respond to police officers, that even in
14 their generalized function of requesting information
15 they need a particularized reason to do so and once
16 they get into their policing function of a common-law
17 inquiry, they require a founded suspicion. And now
18 if the police officer were off duty hanging out in a
19 bar and asked the question, I think we'd have a
20 different situation. But the police officer is not a
21 private citizen but rather an individual with a badge
22 and a gun clothed in the authority of the State.

23 JUDGE SMITH: So the implication is that if
24 you want to - - - if you're a police officer and
25 you're wondering whether the occupants of the car

1 have any weapons, you're not allowed to ask; you just
2 have to ask them to get out of car and see what you
3 see.

4 MR. KOCH: Absolutely. And frankly, that
5 puts them in the same position they'd be in a street
6 encounter. In a street encounter, they walk up to
7 someone who's not sitting in a car and absent a
8 founded suspicion, which it's worth mentioning is a
9 fairly low and easy burden to meet, just not met in
10 this case, the police officer can't, for idle
11 curiosity - - -

12 CHIEF JUDGE LIPPMAN: So you make - - -

13 MR. KOCH: - - - ask that question.

14 CHIEF JUDGE LIPPMAN: So you make the
15 analogy that Judge Pigott made before, you think
16 there is an analogy to the stop-and-frisk and street
17 encounter situations?

18 MR. KOCH: Oh, absolutely. I think that
19 any traffic stop is simply a street encounter plus
20 being in a car for the purpose of these analyses, and
21 Mimms, Robinson, and McLaurin are already designed to
22 address that slight difference, and I think Judge
23 Pigott was exactly right in saying if we make a
24 simple traffic stop, which this court found in Marsh
25 of the VTL itself and this court reiterated on a

1 whole host of cases leading up to Belkin, it's not a
2 criminal offense, it's not even a criminal violation,
3 but is a very special type of violation; to make that
4 a predicate for further police action would create a
5 situation that frankly would make even the current
6 stop and frisk problem look like a small flood.

7 JUDGE CIPARICK: There's an argument that -
8 - - I'm sorry. There's an argument that the - - -
9 asking someone to get out of the car is more
10 intrusive than the inquiry as to whether they have
11 weapons.

12 MR. KOCH: And I think the answer is not
13 more or less but different. It is very intrusive on
14 their right to be seated in their car, which is the
15 right that first the Supreme Court and then this
16 court decided was a right that officer safety needed
17 to be balanced against. It's not intrusive. In
18 fact, the Supreme Court specifically said it's not
19 intrusive of their right to keep their information
20 private because it reveals no new information to the
21 officer that wasn't already available.

22 JUDGE SMITH: What would it take to have
23 founded suspicion in a case like this?

24 MR. KOCH: Well, we've seen all kinds of
25 things. This court has found ideally if the driver

1 appeared to be hiding something, if they gave
2 inconsistent answers to the simple request for
3 identity questions, those are some good examples, if
4 the officer had observed anything amiss, the answer
5 is in this case the trial - - -

6 JUDGE SMITH: Anything except a broken
7 taillight.

8 MR. KOCH: Except a broken taillight
9 because that's a violation of the VTL. I don't
10 really count that as something amiss. I count that
11 as something which, as an administrative feature, the
12 State has a right to require people to fix but which
13 the legislature has expressly said isn't something
14 amiss, isn't a crime, isn't something to give
15 suspicion.

16 And I think the key in this case is that a
17 hearing judge who listened to two different police
18 officers testify in detail said there was not - - - I
19 mean, absolutely nothing to justify the officer's
20 action, and that is frankly what the prosecution does
21 intentionally. They want an absolute rule where if a
22 polite, compliant, absolutely cooperative individual
23 is pulled over, police officers, who already have a
24 plethora of ways to protect their safety, careful
25 ways that this court has created safeguarding

1 constitutional rights, that they should somehow
2 instead also have the right to make a common-law
3 inquiry.

4 And as Judge Pigott rightly raised, in a
5 world where we're dealing with the consequences of
6 unclear rules for police conduct - - -

7 JUDGE PIGOTT: Well, it's a world where all
8 you people are texting while you're driving that
9 you're worried about, I can tell.

10 MR. KOCH: That, too. I myself neither
11 drive nor text, but I don't believe that - - -

12 JUDGE PIGOTT: Fair comment.

13 MR. KOCH: - - - one should do either - - -
14 well, together at least; both driving and texting are
15 okay.

16 You know, that in a world where we have
17 case after case trying to set the boundaries of
18 police conduct, as Judge Read, I think, just said,
19 why do we want to make it murkier, why - - - De Bour
20 works. De Bour has been around for thirty-five to
21 forty years, math is not my strongest suit, and it
22 has worked. And while the People raise some
23 interesting hypothetical arguments of safety, they
24 haven't pointed to a simple - - - a single real
25 safety risk. They haven't pointed to a case that

1 poses a safety risk. This case certainly does not
2 pose a safety risk.

3 And what it does pose, since this court in
4 general, as was said in, for instance, People v. P.J.
5 Video, safeguards and takes very seriously the
6 privacy and liberty interests of New York citizens,
7 the prosecution simply hasn't presented why a traffic
8 summons that was so inconsequential that the officers
9 couldn't find it when asked to testify about it at
10 trial would give rise to this right. And so given
11 that lack of anything for this court to ameliorate,
12 it should simply do as has been done for forty years
13 and recognize that De Bour was decided to address all
14 police-citizen encounters - - - traffic stops, street
15 stops - - - and safeguard rights in that way.

16 CHIEF JUDGE LIPPMAN: Okay, counselor.
17 Thank you, counselor.

18 Counselor, rebuttal?

19 MR. KAPLAN: Thank you, Your Honor, please.

20 Just to begin, there is something actually
21 that I agree with my opponent on which is that this -
22 - - we're not looking at a criminal model here. This
23 is not - - - that may be a way of easily
24 distinguishing the De Bour/Hollman line. It's not
25 investigative; it not questions of tips or

1 observations of criminality.

2 This is a situation with a car is
3 inherently different. It's lawfully stopped, not
4 necessarily for any criminality, but you can't see
5 the hands of individual; they're concealed behind
6 metal. Ordering them out is a good protective
7 action, but we submit it's not enough because it
8 doesn't protect when the people are still in the car
9 - - - the officer - - - in the car. His ques - - -
10 his or her questions in this - - - question, not even
11 plural - - - about whether there is a weapon is not,
12 in and of itself, investigative. We submit it's
13 solely for the purpose of protection.

14 Why is it the case that the possession of a
15 kitchen knife should be private, sacrosanct
16 information that an officer should not be made aware
17 of when he has to confront that individual in a
18 traffic stop, order that person out, and not know
19 that that person is in possession. This person
20 wasn't arrested for it, but at least the officer was
21 able to remain control over it. And that's what
22 we're asking, that the officer in these stops be able
23 to maintain control of a weapon so that the rest of
24 the procedures can go safely. There've been many a
25 weapon which - - - for which there is a license.

1 JUDGE PIGOTT: You put that on the level
2 then of when you stop you ask for license and
3 registration and insurance card and you put it on the
4 same level as that, just an administrative question
5 that can be asked for the safety of the officer.

6 MR. KAPLAN: Well, it's - - -
7 administrative I don't know as far as the
8 nomenclature, but it's protective and that it
9 augments the already given right to these officers to
10 infringe on the privacy by ordering out. It is no
11 small thing to order someone out and to be exposed to
12 friends and neighbors on the street that they have to
13 have a communication with the police. Their friends
14 may not know why. It can be highly embarrassing, yet
15 the law permits it; this court permits it.

16 So all we're saying is this one narrow
17 question should be permitted in order so that an
18 officer can maintain control of a weapon, that is its
19 sole purpose. And it's not based on a criminal
20 model. That's why De Bour/Hollman is a different
21 line of attack.

22 Thank you, Your Honor.

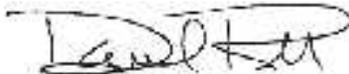
23 CHIEF JUDGE LIPPMAN: Okay. Thanks,
24 counsel. Thank you both. Appreciate it.

25 (Court is adjourned)

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

I, David Rutt, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Garcia, No. 205, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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Date: October 24, 2012