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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

NO. 45

ROBIN PENA,

Respondent.

20 Eagle Street
Albany, New York
September 9, 2020

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The first appeal on this
2 afternoon's calendar is appeal number 45, The People of the
3 State of New York v. Robin Pena.

4 Counsel?

5 MR. ANDERSEN: Yes, Your Honor. Good afternoon,
6 and may it please the court, Paul Andersen for the People.

7 May I reserve two minutes for rebuttal?

8 CHIEF JUDGE DIFIORE: Of course, sir.

9 MR. ANDERSEN: Thank you.

10 The key issue here, Your Honor, is how do we
11 evaluate what is a reasonable reading of the equipment sub
12 - - - of the equipment statute in the VTL? Here - - -

13 JUDGE FEINMAN: I want to stop for one second
14 before we even get there, which is, in this particular
15 case, the officers never actually issued any simplified
16 traffic information, and the accusatory instrument that was
17 ultimately filed doesn't list any VTL equipment-related
18 offenses.

19 MR. ANDERSEN: That's correct.

20 JUDGE FEINMAN: So how do we determine how to
21 even begin that analysis, when we don't know either
22 objectively or reason - - - or subjectively, what the
23 officer had in mind as an equipment violation?

24 MR. ANDERSEN: Well, first, the record shows on
25 page A90, there - - - that there was a defective brake



1 light: Is that a Vehicle and Traffic Law infraction; is
2 that the reason you pulled him over? Yes.

3 So we know that those facts were the - - - the
4 objective facts there were the reason to pull him over.
5 What we don't need is in the subject - - - in the officer's
6 subjective mind what exact VTL violation in his mind. One,
7 because that is - - - would lend towards a subjective
8 standard. And two, it goes against Alford and Devenpeck,
9 which this court cited favor - - - favorably to in Reid,
10 and that what we look at is what the facts the officer
11 testifies to.

12 And here, the facts the officer testifies to,
13 which, in A16 and A17, he clarified it was the middle brake
14 light - - - A117, 116, he clarified it was the middle brake
15 light, and then we had legal arguments that followed of
16 what statutes apply and what would be a reasonable reading
17 of the statutes?

18 Here, the court stopped immediately at
19 375(40)(b), which would be just the equipment part of the -
20 - - the lighting scheme, to say, but completely ignored
21 when the prosecutor said - - - the prosecutor offered, Your
22 Honor, that's actually not all that applies here; if we
23 look up to (19), that talks about how you maintain the
24 lights, and in fact, it refers to 376, which goes further,
25 and says, these lights - - - if any light - - - any vehicle



1 that is not so equipped with or has defectively equipped
2 with these lights would be a violation.

3 So here the court said, no, no, no, we've stopped
4 - - - we have to stay at 375(40), which is what defense
5 counsel argues; it's unambiguous. However, that's really -
6 - -

7 JUDGE WILSON: Is it - - - is it fair to say that
8 375 governs what equipment must be on a car, and 376
9 governs what equipment must work?

10 MR. ANDERSEN: That would be fair for the - - -
11 for the light-signaling devices, yes, Your Honor, because
12 376 is specifically towards lights, but then it gets
13 referred back to - - - it's tough to make - - - to paint
14 375 in such a broad brush, because it's a little - - - it's
15 everywhere. There's fifty-three subsections that ranges
16 from how school buses gets equipped. But that is a correct
17 statement, that this is what is required on a vehicle, and
18 then you look to see how you maintain it or how you have to
19 keep it maintained.

20 And that's consistent with the North Carolina
21 statute that the Supreme Court held in Heien. There was
22 the part that said, you must have a stop lamp in the
23 singular/plural; that was the cause of issue - - -

24 JUDGE FEINMAN: Well, on the maintenance part of
25 it, right, doesn't the - - - the North Carolina statute say



1 "all"?

2 MR. ANDERSEN: Yes, the second part - - - the
3 second stat - - -

4 JUDGE FEINMAN: And we don't have that here.

5 MR. ANDERSEN: Well, we don't - - - yes, Your
6 Honor, but what we have is - - - and it's - - - there's - -
7 - it's still not restrictive language. While, yes, North
8 Carolina went further and said, all equipment, it's not
9 like New Jersey, or Kansas, and the states - - - and the
10 cases I cited, State v. Lees, and State v. Sutherland, in
11 which you have the equipment statute, and then, in
12 maintenance section, had restrictive language of only the
13 lights that are required by the other section have to be in
14 good order.

15 There is no limiting language in 376 at all.
16 It's any - - - if you - - - if you have a vehicle that is
17 defectively - - - that has defective lights, that is
18 enough. And that is a reasonable reading. And that was
19 the reading that the Second Circuit had in U.S. v.
20 Felton/Davidson, and that was a pre-Heien case, in which
21 they said, yes, reading all of these statutes in harmony,
22 this vehicle that had a broken taillight, and - - - which
23 was one of - - - broken brake light, and one of the paired
24 assemblies in the left, one was still working, so there was
25 - - - there, the "at least two" language was fine, but the



1 Second Circuit and the lower court - - - the Eastern
2 District said, actually, no, this statute, read together
3 says, that any time there's a defect or any light that's
4 defective, that's enough to initiate a stop.

5 JUDGE STEIN: As a general matter, how do you - -
6 - how do you determine which statutes to look at?

7 MR. ANDERSEN: Well, Your Honor, you read them
8 all together. I guess, looking generally - - -

9 JUDGE STEIN: So you have to go through every - -
10 - every set - - - every section in the VTL or - - -

11 MR. ANDERSEN: Yes, Your Honor. It's similar to,
12 I guess, being in the complaint room or drafting a
13 complaint. You have these facts in front of you, and you
14 play - - - and you, like, match to what elements hit it or
15 what applies here. And that's - - - you can see, in the
16 hearing, that's what's the prosecutor did.

17 The court asked, what statute applies to brake
18 lights? I think it was - - - it's - - - and then the
19 defense counsel said, no, I think it's only the 375(40).
20 The prosecutor asked, let me get to have more time to
21 research after the break, came back, and came forward with
22 this analysis which met - - - which, while they didn't cite
23 to the Second Circuit, matched nearly identically, and that
24 we read all of these together. And especially when the
25 statute itself tells us, in - - - I think VTL 300 says, the



1 entire title applies to any vehicles driving in the State
2 of New York.

3 JUDGE FEINMAN: Well, would you agree that if - -
4 - if we would just look at 375 and 376, that that alone
5 creates sufficient ambiguity to say this was a reasonable -
6 - - you know, an objectively reasonable mistake of law?

7 MR. ANDERSEN: Yes. In fact, as the prosecutor
8 noted below, in the final argument, on page A170 - - -
9 A171, they actually said, Your Honor, this - - - he
10 actually could have issued a summons for this, and he
11 changed course some - - - or she changed course somewhere,
12 and said, that's a ticketable offense; technically, any
13 lamp that's out is a - - - is a summonsable offense.

14 And so reading that all together, and especially
15 in the absence of - - - of case law interpreting this
16 specifically. Yes, we had Bookman, which I think was the
17 dissenting judge, and also, I think, was decided in weeks
18 prior to the stop, but once again, that only looked at 375
19 in itself, in - - - in a complete vacuum.

20 And that's the same thing that happened in U.S.
21 v. Mota, the case - - - the federal case that happened
22 after the hearing here. And in fact, I've relooked at
23 PACER to see what arguments were raised. The only
24 arguments were raised were just how 375(40) applies.
25 There's no discussion as to 376. And no reference to,



1 which I guess would have been binding authority, on Mota.

2 JUDGE WILSON: Does the VTL require that the
3 third brake light, the center light, be operational? That
4 is, is this a mistake of law - - - a reasonable mistake of
5 law, or is this not a mistake at all?

6 MR. ANDERSEN: It wants - - - having reread and
7 read and read this over, it's - - - it's completely
8 ambiguous one way or the other. I would still argue that
9 since no one has decided, or no court has definitively
10 decided how 376 applies, this still could actually be a
11 violation of the VTL, in that here's a light that's
12 defectively - - - that's defective and not in working
13 condition.

14 JUDGE FEINMAN: Well, we don't necessarily have
15 to decide that's it's a violation of the VTL for you to
16 prevail.

17 MR. ANDERSEN: Absolutely not, Your Honor. You
18 could just say, this is a reason - - - this is a reasonable
19 interpretation of the statute; we don't have to decide this
20 today.

21 CHIEF JUDGE DIFIORE: Counsel, for a moment, did
22 the trial court have the authority to dismiss the
23 accusatory instrument after the Popole filed their notice
24 of appeal?

25 MR. ANDERSEN: No, Your Honor, it did not,



1 especially if the - - - when the reasoning was for
2 suppression of evidence going forward. There's plenty of
3 case law saying that that is outside the statutory
4 authority of how to - - - of when you're allowed to dismiss
5 a case. And so when the court had the - - - our - - - our
6 notice of appeal, and knew we were rearguing, and then just
7 dismissed it kind of on the fly, not too sure if it was
8 already dismissed or not, the record is very unclear
9 exactly what was communicated to the judge during that
10 proceeding. But absolutely not. This should be remanded
11 to the appellate term - - -

12 JUDGE FEINMAN: Well, on that point, if you
13 actually look at the court action sheet, it says dismissed
14 and sealed, and it's initialed by the judge. Is that an
15 appealable paper?

16 MR. ANDERSEN: It - - - yes, Your Honor, it
17 should be. It's - - - it's - - - because it's still a
18 decision decided adverse to us - - - adverse to the People,
19 and we filed our supplemental notice of appeal to include
20 that.

21 JUDGE FEINMAN: So - - - and - - - and - - - and
22 one further point on this, looking at the order that was
23 signed by a judge of this court granting the People leave,
24 and - - - and looking at the description of the order,
25 doesn't it really just limit it to the order affirming or -



1 - - you know, the granting of suppression?

2 MR. ANDERSEN: No, well, what happened there,
3 Your Honor, is because the appellate term didn't reach the
4 question of the dismissal, it dismissed it as academic, so
5 here - - - so it just rendered it based on the suppression
6 decision. So here, I guess this court can really only
7 decide the suppression issue and then remand to the term to
8 consider - - -

9 JUDGE FEINMAN: Well, couldn't we - - -

10 MR. ANDERSEN: - - - the appeal that was proper.

11 JUDGE STEIN: Why isn't it academic?

12 MR. ANDERSEN: It isn't academic because - - -
13 oh, it was rendered academic because after suppression, at
14 the time, we would have conceded that if we - - - if
15 there's no possibility to get this evidence in, just for
16 that case only, we wouldn't pursue it further, or we
17 wouldn't try to go any of the other pathways that would be
18 authorized by 450(50), such as additional evidence that was
19 discovered, or any of those other possible ways, in this -
20 - - facts to the specific case, we, I think, dropped a
21 footnote saying, should we never - - - should this be
22 ultimately suppressed, just ultimately suppressed.

23 JUDGE FEINMAN: So procedurally, what you think
24 should have happened is, once the 450(50) notice is filed,
25 the case is basically paused, if you will, and, you know,



1 carries on the calendar of the criminal court until such
2 time that the intermediate court rules.

3 MR. ANDERSEN: Yes, Your Honor, and that's, based
4 on my experience, is what happens - - -

5 JUDGE FEINMAN: Right.

6 MR. ANDERSEN: - - - in those types of cases.

7 JUDGE FEINMAN: And - - - but now getting back to
8 the appealable paper, isn't an appealable paper usually
9 taken from a motion that's - - - you know, an order that's
10 issued pursuant to a motion, and here, we don't even have
11 that motion, and you sort of have the court going off sua
12 sponte?

13 MR. ANDERSEN: Well, yes, Your Honor, but there
14 is - - - there is still - - - there - - - they - - - these
15 types of issues have been appealed from before, where a
16 court had summarily dismissed based on either an oral
17 application, which this could be construed as, Your Honor,
18 it should be dismissed. I think that was exactly what the
19 - - - the defense counsel said at the hearing. And the
20 court says, okay, but it's - - - we're still some - - -
21 somewhat of an oral motion to dismiss.

22 And that we've appealed from those before in the
23 appellate term, and they've granted the appeal, reinstated
24 it. It is a little - - - it is murky here, I agree, and
25 procedurally complicated, but once again, when we've - - -



1 when we filed a notice of appeal, we filed an additional
2 supplemental notice of appeal - - -

3 JUDGE FEINMAN: But - - - but if you prevail on
4 the suppression issue - - -

5 MR. ANDERSEN: Yes.

6 JUDGE FEINMAN: - - - do we really need to reach
7 all these other issues?

8 MR. ANDERSEN: This court, no. This court would
9 have to re - - - should remand to the appellate term, so
10 then they can address - - -

11 JUDGE FEINMAN: Well, do we have to remand it to
12 them, or can't we just remit it back to the criminal court
13 for further proceedings on the accusatory instrument?

14 MR. ANDERSEN: I - - - I mean, this court could
15 do what it wants, I think, in my head, but - - - but I
16 think - - - I think at the top - - -

17 JUDGE FEINMAN: Always a safe answer in the high
18 court.

19 MR. ANDERSEN: But I think the proper way would
20 be just - - - just to kind of keep it smooth on the correct
21 track, to go down, let the - - - give the appellate term
22 the opportunity to address this outstanding issue, and then
23 eventually, we'd go back to reinstating the instrument.

24 But because right here what we had is the
25 appellate term just address the suppression issue, decline



1 to reach anything else, decline to reach this academic
2 issue, decline to reach the motion to reargue because it
3 lacked jurisdiction, and then here we are just in the
4 suppression issue.

5 So that's, I guess, how the procedural - - - in
6 my mind, how it would go, that I'd come back with the term
7 - - - assuming that this is a reversal, I'd come back to
8 the term, saying, can you please address this outstanding
9 issue. You should reinstate the instrument, because it was
10 dismissed erroneously, et cetera. And then if I prevail
11 there, then it goes back to criminal court for further
12 proceedings on the instrument.

13 CHIEF JUDGE DIFIORE: Thank you, Counsel.

14 MR. ANDERSEN: You're welcome.

15 CHIEF JUDGE DIFIORE: Counsel?

16 MS. EVERHART: Good afternoon. My name is Morgan
17 Everhart. I'm from the Bronx Defenders, and I represent
18 Robin Pena.

19 The Constitution protects us from unreasonable
20 searches and seizures. New York protects drivers from
21 being stopped, pulled over, asked to step out of the car,
22 unless, of course, that stop is reasonable.

23 Robin Pena was not stopped because he broke the
24 law.

25 JUDGE FEINMAN: So - - - so putting aside the



1 VTL, what's so unreasonable for somebody to say, you know,
2 pull over because I just want you to know your - - - your
3 light's out?

4 MS. EVERHART: Certainly. And I think this court
5 addressed that issue last week in People v. Hinshaw. When
6 an officer is going to effect a stop based on solely a
7 traffic violation, as the officer testified very clearly
8 here, the only basis for the stop was his perceived broken
9 middle brake light, in that case, this court has already
10 indicated that there's not the same governmental interest
11 for preventing crimes in those - - - for traffic
12 infractions as there are for - - -

13 JUDGE GARCIA: But I think the judge is asking
14 you, what if that's a safety stop. Your light's out; you
15 know, somebody might run into the back of your car.

16 MS. EVERHART: Certainly. And it's a question
17 here of what is the purview of police officers in this
18 case. Police officers are charged with enforcing the law
19 and with traffic infractions. And the question about a
20 safety stop, we have civil mechanisms to enforce that.
21 That is the purpose of, for example, annual inspections and
22 DMV mechanisms. So - - -

23 JUDGE STEIN: Well, but an annual inspection
24 comes annually. So - - - so if your light is out, and
25 you've just been ex - - - inspected last week, there's no



1 purpose to stopping a vehicle to let them know their
2 light's out?

3 MS. EVERHART: So I think it - - - it's important
4 to note the level of infringement that this kind of traffic
5 stop has. This court noted, again, last week that it is an
6 elevated level, especially when based on a traffic
7 infraction. So in a case where we are seeking suppression,
8 I think the evidence can be suppressed from a stop that is
9 based on a safety concern. And - - -

10 JUDGE WILSON: What do you make - - - what do you
11 make of the reg - - - the DMV regulations, which - - -
12 well, Section 376(b) authorizes the de - - - the
13 commissioner to promulgate regulations, and the DMV has
14 regulations that say that 1987 and newer passenger cars
15 must be equipped with a stop lamp on the vertical center
16 line, and has a regulation that says all stop lamp bulbs or
17 - - - or original equipment must light.

18 MS. EVERHART: Certainly. And - - -

19 JUDGE WILSON: And then 376-a, which authorizes
20 officers to issue citations say that an officer can issue a
21 violation for a - - - any violations of 375, 376, or 381.
22 So does that draw in 376-b, which has those regulations?

23 MS. EVERHART: So I - - - I think there are many
24 answers to those questions. The first is that there's
25 nothing in the record about whether or not Mr. Pena's car

1 falls into the 1987 or thereafter cars that are subject to
2 that DMV regulation. There's no year of the car that's in
3 the record, as far as I'm aware. But even if his car did
4 fall into that category, we don't ask officers to enforce
5 DMV regulations. We ask officers to enforce criminal laws
6 and the Vehicle and Traffic Law. And we ask that officers
7 know the law.

8 In this case, the officer was mistaken about what
9 the law required. And the detail here is very clear.

10 375(40)(b) defines within the subsection that that subsec -
11 - - that statute applies when the - - - I'm sorry. Those
12 lights are illuminated when stepped on the brakes. So
13 within that subsection, it says that you got - - - you've
14 got to have one on either side, which Mr. Pena had, and
15 they've got to be on when you step on the brakes.

16 JUDGE STEIN: Well, if that was the only
17 provision of the VTL that dealt with lights, then that - -
18 - then we wouldn't be here, right? So we - - - but we know
19 that there's another provision, at least one other
20 provision.

21 MS. EVERHART: Yes.

22 JUDGE STEIN: There are maybe more than that, but
23 at least one other provision. And in my view, that
24 provision isn't entirely clear. We've heard about some
25 other states that are clearer one way or the other. This



1 isn't very clear. It's a little ambiguous. So why doesn't
2 that am - - - ambiguity make it an objectively reasonable
3 mistake of - - - of law?

4 MS. EVERHART: Certainly. And that other
5 subdivision, 376(1)(a), that defines within itself that it
6 applies to lights that are on from sunset to sunrise. So
7 we have a provision that are for lights that are on all
8 night long, your headlights and your taillights. And we
9 have a provision that's for lights that are illuminated
10 when you step on the brakes. That's clearly the brake
11 lights.

12 You can read these two statutes together.
13 They're clear independently. And even when read together,
14 they don't create ambiguity. There is one provision only
15 that looks at brake lights. The other is not an umbrella
16 for vision.

17 And to Your Honor's previous point about Heien,
18 the - - - the language in Heien in - - - in the North
19 Carolina statute was different for two reasons. It was not
20 just all lamps; it was all originally equipped lamps. We
21 don't have either of those pieces in the New York statute.

22 So I want to distinguish the ambiguity that was
23 inherent in the North Carolina statute, that it was both
24 all and originally equipped. And what we have in New York
25 is a subdivision that clearly applies to lights that are on



1 all night long; those have to be in good working order.
2 And then we have brake lights; you have to have at least
3 two, one on either side, which Mr. Pena clearly had.

4 And other courts who have looked at this, the
5 lower court, the suppression court, the Southern District
6 of New York, and U.S. v. Mota, look at this exact fact
7 pattern, a broken middle brake light, and they said, the
8 law here is clear. The plain meaning is evident. You look
9 to these statutes, and he was not in violation of them.

10 And again, that's what this court did in Guthrie.
11 They looked to the app - - - this court looked to the
12 applicable laws, the relevant sections of the VTL. There
13 was no ambiguity. Of course, there were outside
14 circumstances, but that's not what we have in this case.

15 It's very simple. He was not violating the VTL.
16 And in fact, in the People's letter asking for cert in this
17 court, they conceded that VTL 375(40)(b) is clear and that
18 Mr. Pena was not in violation of the VTL. So I don't
19 believe that this mistake of law is objectively reasonable,
20 given this specific issue within the VTL. I think the VTL
21 very clearly defines internally which applies.

22 JUDGE FEINMAN: So if we were to disagree with
23 you, and agree with the People's position that there is an
24 objectively reasonable mistake of law, what do you think is
25 the procedural aftermath of that?



1 MS. EVERHART: I do think it's a bit complex. I
2 think that, you know, if this court were not to affirm both
3 lower courts, the matter would likely go to the term, and
4 then the People would decide if they would seek to bring
5 this case again.

6 But I would note also some of the - - - the
7 language from last week's decision in Hinshaw, where this
8 court said that, you know, we have to - - - where we're
9 talking about a traffic infraction, we have to apply an
10 even "greater scrutiny to prevent a police officer's badge
11 from being considered a license to oppress."

12 And so when we have a case where we're talking
13 about an officer's mistake of law on a traffic infraction,
14 this court has found the importance of using greater
15 scrutiny in these circumstances - - -

16 JUDGE GARCIA: Do you think Hinshaw then adds
17 another layer to Guthrie? Guthrie was a violations case,
18 wasn't it?

19 MS. EVERHART: Yes.

20 JUDGE GARCIA: So now we read Guthrie differently
21 - - -

22 MS. EVERHART: I don't think so, but I - - -

23 JUDGE GARCIA: - - - because of Hinshaw?

24 MS. EVERHART: I'm sorry to interrupt, Your
25 Honor.



1 JUDGE GARCIA: No, no, no.

2 MS. EVERHART: I think it emphasizes the - - -
3 the values that this court is looking to when we're making
4 these determinations. This - - -

5 JUDGE GARCIA: But in practical terms, how would
6 that affect our Guthrie analysis?

7 MS. EVERHART: In Guthrie, we have - - - the
8 mistake was simply that we would never expect an officer to
9 know the registration status of a stop sign in a grocery
10 store parking lot. It's not a close call in Guthrie. We -
11 - - the same with Estrella. We don't expect an officer to
12 know the window tinting requirements in the State of
13 Georgia. We would never expect an officer to know that - -
14 -

15 JUDGE GARCIA: But what about the facts in Heien,
16 the Supreme Court case. What - - - what would you expect
17 the officer to know there?

18 MS. EVERHART: The officer is charged with
19 knowing the law; that's what this court said in Guthrie,
20 right?

21 JUDGE GARCIA: So what is changed by Hinshaw?

22 MS. EVERHART: I - - - I think that in terms of -
23 - -

24 JUDGE GARCIA: How we approach the mistake of law
25 analysis?



1 MS. EVERHART: I think it just emphasizes the - -
2 - why we are doing this inquiry in the first place, and
3 it's to protect people's Fourth Amendment and New York
4 Constitutional rights not to be infringed on - - -

5 JUDGE FEINMAN: So it's really not affecting it
6 at all, in terms of mistake-of-law analysis, is where I
7 think you're agreeing.

8 MS. EVERHART: Yes.

9 JUDGE FEINMAN: And that - - - that really goes
10 to an issue which we don't even necessarily need to reach
11 at this point, which is what's the standard of knowledge
12 for - - - you know, whether it's probable cause or
13 reasonable suspicion, for a traffic infraction.

14 MS. EVERHART: Absolutely. We don't need to
15 reach that. The question is, is it reasonable? It's
16 either reasonable or it's not. And in - - - in - - - it's
17 not a reasonable mistake. Every court that has looked at
18 this subdivision with these facts has found that it's not a
19 reasonable mistake, because the law here is so clear. The
20 officer was simply mistaken. The - - -

21 JUDGE RIVERA: So if it's a reasonable mistake,
22 you have probable cause?

23 MS. EVERHART: Sorry?

24 JUDGE RIVERA: If it's a reasonable mistake, you
25 have probable cause?



1 MS. EVERHART: If it was a reasonable mistake of
2 law, then - - - then yes. I mean, they would be - - - yes.

3 CHIEF JUDGE DIFIORE: Thank you, Counsel.
4 Counsel?

5 MR. ANDERSEN: Oh, yes, very briefly.

6 JUDGE RIVERA: And Counsel, you agree Hinshaw
7 does not affect the analysis here?

8 MR. ANDERSEN: In - - - in the sense that if we
9 focus on the objectively reasonable mistake of law, no, it
10 doesn't affect it. This would be - - - there would be
11 clear probable cause based on the broken taillight - - -
12 broken middle brake light. If we also then went the other
13 route of is it reasonable suspicion that the - - - that the
14 vehicle wasn't inspected properly, then Hinshaw, obviously,
15 I think - - -

16 JUDGE RIVERA: So if an officer is incorrect
17 about whether or not one has broken the law - - -

18 MR. ANDERSEN: Yes?

19 JUDGE RIVERA: Okay, right?

20 MR. ANDERSEN: Yes.

21 JUDGE RIVERA: When we say it's reasonable under
22 the circumstances to have made such a mistake - - -

23 MR. ANDERSEN: Yes.

24 JUDGE RIVERA: - - - that gives you probable
25 cause?



1 MR. ANDERSEN: It - - - I - - - it depends exact
2 - - - I guess on the facts of the matter whether it rises
3 to the level of probable cause. I mean, in this case, it's
4 a broken light. That's pretty much all you need. And for
5 many of these equipment violations, and - - -

6 JUDGE RIVERA: I guess that's a yes?

7 MR. ANDERSEN: Yes, Your Honor. Yes, absolutely.

8 JUDGE RIVERA: Thank you.

9 MR. ANDERSEN: Yes, Your Honor.

10 To just briefly address the nighttime issue, once
11 again, the brake light could also be a signaling device.
12 None of these terms are really defined. It signals to the
13 car behind you're stopping. There's no limitation in 376
14 that signals only work at night, to wit, if we read it as a
15 lamp, of course, the legislature would want lamps to work
16 at night, including a stop lamp, where - - - so that
17 someone can see it.

18 So based on all of these readings - - -
19 interpretations of 376, the officer's mistake was
20 reasonable here. He had probable cause, and the evidence
21 should not have been suppressed. And if there are no
22 further questions, I will yield my time.

23 CHIEF JUDGE DIFIORE: Thank you, Counsel.

24 MR. ANDERSEN: Thank you.

25 (Court is adjourned)



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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Robin Pena, No. 45 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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