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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

RAKEEM DOUGLAS,

Appellant.

NO. 68

20 Eagle Street
Albany, New York
September 14, 2023

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Amanda M. Oliver
Official Court Transcriber

1 CHIEF JUDGE WILSON: Next matter on the calendar
2 is Number 68, People v. Rakeem Douglas.

3 MR. STROTHER: Good afternoon, Your Honors.
4 Stephen Strother from the Office of the Appellate Defender
5 on behalf of Rakeem Douglas.

6 Mr. Douglas' conviction should be vacated because
7 the warrantless search of his car was carried out pursuant
8 to a facially unconstitutional inventory search protocol.
9 An inventory search is only as lawful as the protocol that
10 authorizes it. And it's the prosecution's burden to
11 introduce that protocol in the first instance.

12 This protocol, which was introduced, Section 218-
13 13 of the NYPD - - - I'm sorry, NYPD Protocol Section 218-
14 13, provides no guidance to police officers about what
15 they're supposed to do with property after it's taken out
16 of a car, and before it's vouchered. So what that looks
17 like - - -

18 JUDGE SINGAS: Before we get into the substantive
19 issues, so again, is the - - - is your argument that it's
20 as applied or on its face that it's unconstitutional?

21 MR. STROTHER: It's a facial challenge to the - -
22 - to the - - -

23 JUDGE HALLIGAN: So you are - - -

24 MR. STROTHER: - - - protocol.

25 JUDGE HALLIGAN: - - - you are not bringing an

1 as-applied challenge?

2 MR. STROTHER: No. This is a facial challenge to
3 the protocol - - -

4 JUDGE HALLIGAN: Only?

5 MR. STROTHER: - - - as written. I'm sorry?

6 JUDGE HALLIGAN: I'm just trying to understand,
7 is it exclusively a facial challenge and does not include
8 an as-applied challenge?

9 MR. STROTHER: That's correct.

10 JUDGE HALLIGAN: Okay.

11 MR. STROTHER: And so - - -

12 CHIEF JUDGE WILSON: And why are you not making
13 an as-applied challenge, just out of curiosity?

14 MR. STROTHER: My understanding of the law is
15 that if the protocol's valid, and the police follow it,
16 it's a lawful inventory search. And so what's odd here is
17 that they followed this protocol because the protocol says
18 nothing about what they're supposed to do with the property
19 between the time they recover it and the time they voucher
20 it.

21 CHIEF JUDGE WILSON: So the difficulty I have - -
22 - or I've been having, I guess, with this case - - - we're
23 here for your argument - - - is that when you were
24 attempting to make a facial challenge in the court of
25 instance, the court said, essentially, we're not having a

1 referendum on this policy. And it seemed to me that,
2 likely, you, but I think certainly the People were then,
3 some - - - some combination or something in between,
4 precluded from or dissuaded from creating a full record
5 that might have been created for a facial challenge.

6 So if you're all - - - all you're making is a
7 facial challenge, I am worried that we don't have a record
8 good enough to decide that challenge.

9 MR. STROTHER: I think we do because the - - -
10 the - - - the second - - - all we need to decide the
11 challenge is the protocol. And the protocol's in the
12 record.

13 CHIEF JUDGE WILSON: Does the protocol have to be
14 exclusively in writing?

15 MR. STROTHER: It doesn't have to be, but, of
16 course, they've also offered in this case what they believe
17 to be the supplements necessary, Section 218-01. But the
18 problem with that section is that it - - - it doesn't
19 govern anything the police do with property before it's
20 vouchered.

21 JUDGE GARCIA: Counsel? Also, just am I correct
22 that that conversation, and I may be wrong, but the
23 conversation I think the Chief Judge is alluding to, took
24 place after the close of evidence in - - - in the hearing,
25 when he - - - the judge said, I'm not hearing about the

1 protocol. So it - - - it wasn't that he was precluding
2 evidence that you were going to put in. I thought that was
3 a statement made after the close of the hearing.

4 MR. STROTHER: It was during argument. He asked
5 for defense counsel's argument. Counsel argued. Began to
6 make a facial challenge. The court immediately said, we
7 will not be doing that, move on.

8 JUDGE GARCIA: But it wasn't a - - - it wasn't a
9 case of there wasn't evidence put in that you wanted to
10 argue, the hearing was closed at that point in terms of
11 evidence, right?

12 MR. STROTHER: Yes, the hearing had been
13 completed. And - - - and I want to make the point that it
14 is the prosecution's burden to actually submit a
15 constitutionally valid protocol. They submitted the
16 section of the patrol guide titled, Inventory Searches of
17 Automobiles. That is what it is called.

18 A challenge has been made and, now, for the first
19 time, on appeal, they're offering these other sec - - -
20 this other section. The problem is that that other section
21 doesn't actually address what the police do with property
22 before it's vouchered.

23 JUDGE HALLIGAN: So - - - so is your position
24 that in every case in which there is a challenge, that the
25 People have to mount a full-fledged defense and explanation

1 of the protocol, and - - - and then either you have a
2 facial challenge that lies to that protocol or no challenge
3 at all?

4 MR. STROTHER: So it - - - my position is that
5 the pros - - - the law says that the prosecution must
6 establish as a - - - in the first instance, a
7 constitutionally sufficient protocol. So they must
8 introduce that into evidence at the hearing. Now, it's up
9 to - - - to defense counsel to challenge it or not on a
10 facial level. In this case, we did. In some cases, they
11 are not. But no matter what, it's the prosecution's burden
12 to put that protocol into the record in some form.

13 JUDGE GARCIA: I think your point was is you
14 could make a facial - - - an as-applied challenge, but your
15 argument here wasn't they didn't comply with that protocol;
16 it's that the protocol, itself, is unconstitutional.

17 MR. STROTHER: Exactly. So the protocol, itself,
18 is unconstitutional because the purposes of an inventory
19 search are to secure property and to prevent the police
20 from being sued for claims of loss or theft.

21 JUDGE HALLIGAN: So what provisions exactly do
22 you think would need to be added to make the protocol, in
23 your view, constitutional? Would there have to be a
24 limit - - - specific hours, or just a reasonable period of
25 time?

1 MR. STROTHER: So I think that actually it just
2 needs to be amended very simply to say, that after the
3 police remove property from a car, they must secure it by
4 placing it in some secure - - -

5 JUDGE HALLIGAN: Start - - - stay, if you would,
6 for a moment, with what the timeliness is first.

7 MR. STROTHER: Sure.

8 JUDGE HALLIGAN: Okay.

9 MR. STROTHER: So for timeliness, I think that
10 the Supreme Court requires that it be done within a
11 reasonable period of time.

12 JUDGE HALLIGAN: And in your view, does that have
13 to be expressly included, explicitly, in the - - - in the
14 protocol?

15 MR. STROTHER: I don't think an hour number has
16 to be. I think the words a reasonable period of time - - -
17 but we also think that if the police secure the property,
18 if they place it in an evidence locker, or somewhere where
19 it can't be tampered with, then that time period can be
20 more flexible because nothing's going to happen to the
21 property while it's there.

22 JUDGE HALLIGAN: Is it your view that the
23 protocol has to expressly state that the property has to be
24 secured, or is a practice of securing it sufficient?

25 MR. STROTHER: I believe it has to - - - I - - -



1 I believe it needs to tell the police to secure it.
2 Because in this case, as you can see, it doesn't. And then
3 when Officer Burgos is asked, what do you consider
4 inventorying the property, and he says, putting it in a
5 plastic bag and leaving it for eleven hours in a precinct.

6 And if that's what the police consider securing
7 it, that's not secure. If something --

8 JUDGE CANNATARO: So it has to - - - it doesn't
9 just have to say securing. It has to include some minimal
10 concept of what that means?

11 MR. STROTHER: I would think so because, I mean,
12 and also this is not an unusual thing, right? Other parts
13 of the - - - of the patrol guide are pretty extensive about
14 how to secure property. Like, if you look at the section
15 they admitted, 218-01, which is about what happens after
16 they voucher it, right? In this case, it sits for eleven
17 hours, then they voucher it. Once it's vouchered, 218-01
18 takes over. It's very detailed about what happens.

19 JUDGE HALLIGAN: I guess, what I'm grappling with
20 is the difference between a protocol that, in your view, is
21 insufficient, and failure to comply with the protocol.

22 So for example if the protocol said, reasonable
23 period of time, could you argue that the eleven hours here
24 was not reasonable in light of the circumstances?

25 MR. STROTHER: Oh, I think we could, yes. I

1 think if the protocol actually required a reasonable amount
2 of time, we would argue that this is unreasonable.

3 JUDGE HALLIGAN: And - - - and if the protocol
4 said you have to secure or safeguard the property, you
5 could argue they didn't do that in this circumstance?

6 MR. STROTHER: That's correct. But my reading of
7 the law is that if the police follow the protocol, the only
8 legal question is the sufficiency of the protocol. Here,
9 it's insufficient because there's nothing about what the
10 police are supposed to do.

11 And I want to turn this court's attention, if I
12 can, to - - -

13 JUDGE SINGAS: But can I - - - can I just ask
14 you. On the protocol, it says, under sub 3, remove all
15 valuables from the vehicle and invoice on a separate
16 property clerk invoice. So it's not true that they - - -
17 there's no direction as to what to do.

18 MR. STROTHER: Yes. But the problem is that they
19 don't tell them when they have to do it or - - - when they
20 have to make the property voucher or what they're supposed
21 to do with the property until they make the voucher.

22 So, like, in this case, the voucher wasn't made
23 for eleven hours. In other cases, I mean, we want to point
24 this court's attention to Ex Parte Boyd, the Ala - - -
25 Supreme Court of Alabama case. We know it's not binding,

1 but it's - - - we think it's instructive. And there is was
2 four days, right, it just sat and waited. And they make
3 the point that the longer the period of time passing
4 between when the police take custody of the vehicle and
5 when the vehicle's contents are cataloged, the greater the
6 opportunity the property will be stolen, damaged, tampered
7 with, spoiled.

8 JUDGE TROUTMAN: In this particular instance, the
9 idea of the protocol is so that you can produce a usable
10 inventory list. And here if it - - - are you saying that
11 what was done here, the eleven hours, caused it to be - - -
12 caused it to be such that there wasn't a valid usable list
13 that was produced?

14 MR. STROTHER: So because it's a facial
15 challenge, we're not challenging whether this particular
16 list was usable. At the same time, I do want to make the
17 point that this - - -

18 JUDGE TROUTMAN: But even with the facial
19 challenge, the purpose is to get a list?

20 MR. STROTHER: That's right. So I want to get
21 into what I think the problem here is, is that let's say,
22 because this protocol says nothing about how much time will
23 pass or what will happen to the property until it's
24 vouchered, let's say it sits in a precinct in a bag for
25 three days, and the officer comes back and says, okay, it's

1 time to voucher this property, and he makes the list. At
2 that point, there is no way to know whether what's in that
3 bag was what was actually taken out of the car. It could
4 have been - - - items could have been thrown away, could
5 have been added to. No matter - - - there are lots of
6 things that could happen. There's no way an officer making
7 a list will know, unless he has an extraordinary memory, he
8 is not going to remember whether what he took out of that
9 car is what's in that bag.

10 The whole purpose of an inventory search protocol
11 is to prevent that - - - like, that kind of uncertainty.
12 It's a warrant substitute, right? The whole - - - we allow
13 police to do this because it's the structure - - -

14 JUDGE TROUTMAN: So your argument is because
15 reasonable time isn't included, it creates that
16 uncertainty?

17 MR. STROTHER: It's not just reasonable time.
18 It's actually primarily that there's no provision for the
19 security of the property during that time, right? Because
20 then it can just sit unattended.

21 JUDGE TROUTMAN: So your primary focus is
22 securing?

23 MR. STROTHER: Yes. We think that se - - - that
24 the time matters because of how - - - because of the fact
25 that it's unsecured, for how long it can sit without being

1 dealt with. And that's when the kind of outcomes,
2 inventory search protocols are supposed to prevent, that's
3 when they actually happen.

4 JUDGE SINGAS: I think last time during argument,
5 you were asked about the time, how long can property be in
6 a secure location before vouchering. And I think you said
7 that the police can take the time they need to take, as
8 long as the property is secured.

9 MR. STROTHER: I think the only - - - I mean the
10 limitation is - - -

11 JUDGE SINGAS: So is that statement still true or
12 are you - - - are you changing it now to say - - -

13 MR. STROTHER: No. I think - - - what we said,
14 we said that, but then we also mentioned, of course, the
15 Supreme Court says it has to be a reasonable amount of
16 time, so that limitation comes in. But I do believe
17 reasonable gets adjudicated on a case-by-case basis, so
18 we're not trying to impose, like, a specific hour number or
19 anything like that.

20 Thank you, Your Honors.

21 CHIEF JUDGE WILSON: Thank you.

22 MR. KRESS: Good afternoon, may it please the
23 court, Stephen Kress on behalf of the People.

24 So defense counsel said it is our burden to
25 establish a valid inventory search procedure. Yes,

1 absolutely, it is. If the defense feels we have not done
2 that, it is the defense's burden to object and point that
3 out. And the defendant simply never made the facial
4 challenge that he's making now below. And I think that's
5 important because by not making that challenge, we didn't
6 then have an opportunity to put in additional evidence that
7 we could have put in to develop - - -

8 JUDGE SINGAS: Well, the judge didn't allow him
9 to make the challenge.

10 MR. KRESS: I - - - I don't agree with that,
11 Judge Singas. So yes, the judge does say, we're not going
12 to have a referendum about this.

13 JUDGE SINGAS: Correct.

14 MR. KRESS: However, three pages later in the
15 transcript, defense counsel says, well, actually, Judge, I
16 am going to make a facial challenge, and then he goes on to
17 say that the inventory search protocol gives the police
18 officers too much discretion in how they do the search. He
19 had an opportunity to make the facial challenge he's making
20 now. He didn't do it. He made a different - - - excuse
21 me - - - a different challenge. He never said anything
22 about, well, this doesn't talk about, you know, securing
23 property, and - - - and so therefore it doesn't - - -

24 JUDGE TROUTMAN: So arguing about, in generally
25 how - - - was insufficient to preserve, specifically,

1 securing the item?

2 MR. KRESS: I - - - yes, Your Honor. I think it
3 has to be the specific argument. And this specific
4 argument was not raised, so - - -

5 JUDGE HALLIGAN: Can you - - - is there anything
6 in the protocol that requires the police to secure the
7 property?

8 MR. KRESS: I - - - I would say there is, Your
9 Honor. And so - - -

10 JUDGE HALLIGAN: Where in the record could you
11 point us to?

12 MR. KRESS: So if you look at the patrol guide
13 itself - - -

14 JUDGE HALLIGAN: Um-hum.

15 MR. KRESS: - - - the very first part of it says
16 purpose. And it says to protect property, insure against
17 unwarranted claims of theft, and protect uniform members of
18 the service and others against dangerous instrumentalities.

19 JUDGE HALLIGAN: And is there a page of the
20 appendix that you're on that you might help me with?

21 MR. KRESS: Yes. It's page 156.

22 JUDGE HALLIGAN: Thank you.

23 MR. KRESS: So I think by setting forth at the
24 very beginning, this is the purpose, this is the reason why
25 we're doing this search, is to protect property, and insure

1 against claims of theft or loss. I think any rational
2 police officer, and - - - and let me just pause and say,
3 the test is whether this protocol is rationally designed,
4 not necessarily perfectly designed, but is it rationally
5 designed to achieve the goals of an inventory search.

6 And I think any rational police officer reading
7 this, and saying, okay, the purpose of this is to prevent -
8 - - protect property and insure against claims of loss or
9 theft, no rational police officer is then going to say, oh,
10 okay, well, after I take these items out of the car, I can
11 just leave them completely unsecured in the station house
12 indefinitely. I - - - I don't think that is reasonable to
13 read from this.

14 So - - -

15 JUDGE HALLIGAN: And what about a limitation on -
16 - - on the time that it takes, a reasonableness constraint,
17 or something like that?

18 MR. KRESS: So the law imposes one already, Your
19 Honor, as defense counsel mentioned. I - - - and I don't
20 think that that has to be expressly included if it is
21 already a legal obligation that is imposed on the police.

22 JUDGE HALLIGAN: So is your view that it is not,
23 in fact, included, or is it included somewhere explicitly?
24 I understand you're saying it doesn't need to be. But is
25 it - - - is it included explicitly?

1 MR. KRESS: I mean, I think if you look at 218-
2 01, I think that does imply that the inventorying process
3 is supposed to be done, I wouldn't say simultaneously, but
4 contemporaneously with - - - with the removal of the
5 property because it says, upon taking into custody.

6 But, yes, I think even if it - - - if it does not
7 expressly say reasonableness, I think since the law imposes
8 that requirement, that wouldn't render this, again, not
9 rationally designed to achieve the goals.

10 JUDGE CANNATARO: And do you have to do the same
11 thing for securing? Do you have to go look to other
12 sections of the patrol guide to get a working definition?
13 The word secured is not in 218, is it?

14 MR. KRESS: No. I - - - but, the word protect is
15 in - - - in the purpose. It says to protect property.

16 JUDGE CANNATARO: That's the - - - yeah, well,
17 that' sort of, like, a preamble-ish, what the purpose of
18 the regulation is. But the - - - there's no instruction to
19 secure property in the patrol guide, is there?

20 MR. KRESS: Not - - - not verbatim, Your Honor.
21 But I think by defining the purpose, I think the policy is
22 impressing - - -

23 JUDGE TROUTMAN: So is it implied?

24 MR. KRESS: Yes. I - - - I think it is. I think
25 it's - - - it's impressing upon officers that this is their

1 obligation. And, in fact, both of the officers in this
2 case testified that that was their understanding, that this
3 was the reason why they're doing this search, and as a
4 result, they had an obligation to safeguard the defendant's
5 property.

6 JUDGE CANNATARO: And then, Counsel, do you have
7 to go look to other sections of the patrol guide for a
8 definition, for an explanation of what that implied concept
9 of secured is?

10 MR. KRESS: In other words, like - - -

11 JUDGE CANNATARO: And my last question will be,
12 and if that is so, did - - - was that complied with here?

13 MR. KRESS: So let me just make sure I
14 understand. So are you asking is there a definition of
15 what it means to protect - - - or - - - or to safeguard?

16 JUDGE CANNATARO: Your adversary mentioned
17 during - - - during oral argument, when - - - when he was
18 being asked about what secured is, he said you can look to
19 other provisions of the patrol guide to see, to get a sense
20 of what that means, what that - - -

21 MR. KRESS: Oh, okay.

22 JUDGE CANNATARO: - - - word means in this
23 context. And I'm asking you, is that statement true, that
24 you can look to other sections of the patrol guide, and is
25 it your argument that that's what needs to be done for an

1 officer who's fulfilling their duty to comply with this
2 regulation.

3 MR. KRESS: Okay. I - - - I do agree. I think
4 other sections of the patrol guide do talk specifically
5 about how certain items, like, firearms, for example, how
6 those are supposed to be safeguarded. But I don't think
7 that you'd necessarily have to look to those other
8 provisions when you're talking about generic property.

9 You know, like, in this case, there were some
10 items of clothing and other personal items that were taken
11 from the car. I don't think you need to look at another
12 section to say, like, okay, those items have to be, you
13 know, policed in a particular location, or a particular
14 type of security. I think that would get into - - - I
15 think it would really be micromanaging. And I think it's
16 not - - - it's not curbing discretion.

17 JUDGE RIVERA: So - - - so then you're saying
18 those other provisions would not apply?

19 MR. KRESS: I think it's - - - if I'm remembering
20 correctly, I think they deal specifically with particular
21 types of evidence. So they could - - - you could secure
22 property that way. But I don't think it necessarily would
23 be - - - have to be done in the same way.

24 JUDGE RIVERA: So then - - - then does it create
25 some ambiguity that there are sections are particular to

1 certain types of property that would leave an officer
2 wondering what am I to do with something that doesn't fall
3 within those definitions?

4 MR. KRESS: No. I - - - I think they would
5 understand they have to protect it. Or safeguard it in
6 some way.

7 JUDGE RIVERA: But that would be true - - - let's
8 just take the gun, I think you said - - - I think you said
9 a gun, a weapon, okay? That would be true about a weapon,
10 but obviously if some higher-up, the drafters of the
11 policy, decided that they thought it was necessary to
12 explain how to do that. That's what I'm saying. Without
13 the explanation for these other types of properties, does
14 that leave a certain un - - - is that - - - does that leave
15 the officer uncertain about how to protect the property,
16 when there are other sections explicitly telling you how to
17 do that?

18 MR. KRESS: I don't think it would leave them
19 uncertain. If there's - - - if the property that this
20 officer is dealing with doesn't fall into that specific
21 category. I mean, the - - - an officer here would know
22 this isn't a gun, so I don't have to necessarily put it in
23 a safe. But I don't think you would be left uncertain
24 about - - -

25 JUDGE RIVERA: Well, how would they know what's

1 the minimal way to protect this property, the minimum thing
2 that they have to do?

3 MR. KRESS: I don't think that - - - so I - - - I
4 think - - - our - - - I think the question you're getting
5 at is - - -

6 JUDGE RIVERA: I take, in part, your answer is
7 that you've got this other section, an officer would
8 understand that if it's not a weapon, okay, I don't have to
9 do those things, but how would an officer know from
10 what's - - - what's in the record, what's available to them
11 under the policy? What is, at least, the minimum that
12 they'd have to do?

13 MR. KRESS: I - - - I mean, I - - - I think they
14 would just understand from the purpose of this protocol.
15 Again, we're talking about, we don't want property to be
16 damaged, stolen, contaminated with in some way. So you
17 have to do something to prevent that. I - - - and I don't
18 think you need to say, you know, that means you have to, at
19 the very least, keep it on your - - - you know, keep it in
20 your eyesight the entire time, or you have to put it in a
21 particular location.

22 I think the discretion that Galak, in particular,
23 talks about, they talk about limiting officer discretion
24 with respect to what is searched and what is seized. And,
25 here, the search is over, and the seizure is over at this

1 point. And so I think by saying - - - like, by trying to
2 establish uniformity, or some sort of minimum level about,
3 you know, protecting property afterwards, it - - - I don't
4 think it's advancing the Fourth Amendment interests that
5 are at stake here, or the state constitutional interests
6 that are at stake, which apply to arbitrary searches and
7 seizures since the search is over and the seizure is over.

8 And unless there are any other questions from the
9 Court, I would ask that the judgment of the First
10 Department be affirmed.

11 CHIEF JUDGE WILSON: Thank you.

12 MR. STROTHER: I believe I forgot to reserve
13 rebuttal time, and I don't know if there's the possibility
14 of getting any, but I don't think so.

15 CHIEF JUDGE WILSON: Why don't we give you a
16 minute.

17 MR. STROTHER: Sure. My mistake.

18 Two points, very quickly. First, is that Galak
19 actually explicitly holds that what the police do with the
20 property after it's seized is a part of the Fourth
21 Amendment inventory search inquiry. So that's an explicit
22 holding on page 271 of the Galak decision. So yes, it is
23 relevant.

24 The second thing is that nothing in the patrol
25 guide anywhere says that a - - - property must be secured

1 before it is vouchered. And it provides no time limit for
2 when the vouchering must happen.

3 So the point here is that when we pull - - - when
4 we said other parts of the patrol guide say how to secure
5 property, the point we're trying to make is that it's
6 actually not micromanaging. The police know how to put
7 property in an evidence locker for an extended period of
8 time if they have to. That's a simple thing to do.

9 If we say to the - - - if we say - - - or this
10 court could issue a holding, saying, the patrol guide has
11 to - - - the protocol has to make provision for the
12 security of the property until it is vouchered. And it
13 must be vouchered within a reasonable amount of time. That
14 is an easy thing for the NYPD to do.

15 The point - - - the reason I brought up 218-01 is
16 because it shows that after it's vouchered, they give it to
17 a property clerk, the property clerk holds on to it until
18 it goes to the next person down the line. That's a pretty
19 straightforward process. It's an - - - it's a few
20 sentences. The problem is that there's nothing in this
21 patrol guide that tells the police to do that until they
22 voucher it.

23 And in this case, you see what happens. It sits
24 for eleven hours in a garbage bag. In the future, it could
25 be four days, three days, depending on what the police

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offer considers to be his priorities at that time. That's the kind of discretion that's not supposed to be in the protocol. Specifically, that's the problem here.

And I want to reiterate Galak explicitly says that's a problem - - -

CHIEF JUDGE WILSON: Thank you, counsel.

MR. STROTHER: - - - that has to be dealt with. Thank you, Your Honors.

(Court is adjourned)

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

I, Amanda M. Oliver, certify that the foregoing transcript of proceedings in the Court of Appeals of Rakeem Douglas v. The People of the State of New York, No. 68 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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