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publication in the New York Reports.

No. 43
The People &c.,
Respondent,
v.
Tecoy Ingram,
Appellant.

Stewart F. Hancock, Jr., for appellant.
James P. Maxwell, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed,
and the matter remitted to Supreme Court for further proceedings
in accordance with this memorandum.

CPL 470.15(1) precludes the Appellate Division from
reviewing an issue that was either decided in an appellant's

favor or was not decided by the trial court (see People v Concepcion, 17 NY3d 192 [2011]; People v LaFontaine, 92 NY2d 470 [1998]). In an appeal from an Appellate Division affirmance, CPL 470.35(1) grants us no broader review power than that possessed by the Appellate Division. Here, without addressing the validity of Supreme Court's rationale, the Appellate Division resolved defendant's suppression application on a theory not reached by the suppression court.

People v Tecoy Ingram

No. 43

PIGOTT, J. (dissenting):

For the reasons that Judge Smith stated in his dissent in People v Concepcion (17 NY3d 192, 201-207 [2011]), I remain convinced that People v LaFontaine (92 NY2d 470 [1998]) should be overruled. The majority thinks differently, and I would be constrained to accept their view of this case, except that LaFontaine clearly does not apply here.

In LaFontaine, the trial court and Appellate Division found contrary rationales for denying a suppression motion. The trial court concluded that New Jersey police officers were authorized to execute a Federal arrest warrant in New York, and explicitly rejected the rationale that the New Jersey police effected an authorized citizen's arrest. However, the Appellate Division accepted the citizen's arrest ground for denying suppression, thus deciding the appeal on an issue on which the defendant had prevailed. Similarly, in Concepcion, the trial court denied suppression to defendant on "inevitable discovery" grounds, and expressly rejected the alternative rationale of "consent," while the Appellate Division denied suppression on that very basis.

In both LaFontaine and Concepcion, the Appellate

Division upheld a denial of suppression on a ground that the trial court had "explicitly rejected" (LaFontaine, 92 NY2d at 473; see also Concepcion, 17 NY3d at 196 [Appellate Division upheld denial of suppression on a basis that Supreme Court had "squarely rejected"]). Because the ground upon which the Appellate Division affirmed had previously been decided in appellant's favor, we held that the Appellate Division should not have reached that issue.

Here, on the other hand, the trial court ruled that both the police officer's initial request for defendant's name and his inquiry after he realized that defendant had given him a false name were permissible under the first level of De Bour police intrusion, "the minimal intrusion of approaching to request information" (People v De Bour, 40 NY2d 210, 223 [1976]), while the Appellate Division ruled that the initial request for defendant's name was permissible under the first level of De Bour, but that the officer's second inquiry was justified by a "founded suspicion that criminality is afoot" (De Bour, 40 NY2d at 223), the second level of De Bour.

What distinguishes this case from LaFontaine and Concepcion is that the trial court did not reach the rationale of the Appellate Division that the police officer had founded suspicion of criminal activity. Far from deciding the issue in defendant's favor, the trial court, in so far as it was of the view that the officer's second inquiry did not rise to the second

level of De Bour, committed an error that if anything "adversely affected the appellant" (CPL § 470.15 [1]).

The result today is that the case will be remitted to the trial court, which will no doubt read the Appellate Division's decision and deny suppression on DeBour second-level grounds, instead of first-level grounds. This is a pointless exercise.

In my view the Appellate Division's ruling here is consistent with CPL § 470.15 (1), and I would reach the merits. Because I believe that defendant's arguments on appeal either lack merit or are unpreserved for our review, I would affirm the order of the Appellate Division.

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Order reversed and case remitted to Supreme Court, Onondaga County, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Ciparick, Graffeo, Read and Jones concur. Judge Pigott dissents and votes to affirm in an opinion in which Judge Smith concurs.

Decided March 29, 2012