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COURT OF APPEALS

STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

No. 28

NATURE FINCH,

Appellant.

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20 Eagle Street  
Albany, New York 12207  
January 16, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 28, People v. Finch.  
2 Counselor - - -

3 MR. ROTHSCHILD: Good afternoon - - -

4 CHIEF JUDGE LIPPMAN: - - - would you like  
5 any rebuttal time?

6 MR. ROTHSCHILD: Two minutes, Your Honors.

7 CHIEF JUDGE LIPPMAN: Sure. Go ahead.

8 MR. ROTHSCHILD: May it please the court.  
9 Phil Rothschild from Hiscock Legal Aid for the  
10 appellant Mr. Finch.

11 In this case, police had no probable cause  
12 to arrest Mr. Finch for trespass. He was not a  
13 trespasser. He was a guest - - -

14 CHIEF JUDGE LIPPMAN: So does that make the  
15 resisting arrest automatically fall?

16 MR. ROTHSCHILD: In and of itself, no, Your  
17 Honor. However, the fact - - - in this case, what  
18 constitutes probable cause are two things. Police  
19 must have facts warranting a reasonable person,  
20 possessing the same expertise as the officer, to  
21 conclude that Mr. Finch committed a crime.

22 JUDGE SMITH: What did the - - - we have to  
23 view the record most favorably to the People, don't  
24 we, on that issue?

25 MR. ROTHSCHILD: Yes, you do, Your Honor.

1 JUDGE SMITH: Reviewing the record most  
2 favorable to the People, what did the officer know?  
3 I mean, he did know that the manager of the - - -  
4 that apartment complex had - - - had said that Finch  
5 was not authorized to be there.

6 MR. ROTHSCHILD: And he did also know that  
7 the area was posted. However, those were essentially  
8 irrelevant, in light of the fact of the more  
9 important fact that the police were informed of Mr.  
10 Finch's invitee status, because Ms. Bradley - - -

11 JUDGE SMITH: Where does it show that they  
12 knew that Ms. Bradley had invited him on that - - -  
13 on the day of the - - - the - - - what is it, May  
14 12th, the day of the resisting arrest?

15 MR. ROTHSCHILD: Well, Your Honor, going at  
16 it seriatim, at the first arrest, Ms. Bradley  
17 basically yelled at the officers, telling them, you  
18 can't arrest him, he's my guest, he's not trespassing  
19 - - -

20 JUDGE SMITH: Okay.

21 MR. ROTHSCHILD: - - - screamed this at  
22 both of them.

23 JUDGE SMITH: But - - - and I - - - I  
24 certainly see how you could draw an inference that if  
25 he was her guest on April whatever, he was also her



1 invitee. He was the - - - not only the father of the  
2 child, but he was also the paramour of Ms. Bradley,  
3 obviously. But we would submit that the People's  
4 argument regarding, well, because - - -

5 JUDGE GRAFFEO: So your answer is yes, he's  
6 cloaked - - -

7 MR. ROTHSCHILD: Yes.

8 JUDGE GRAFFEO: - - - with the invitee  
9 status, no matter why - - -

10 MR. ROTHSCHILD: Yes.

11 JUDGE GRAFFEO: - - - he's there or how  
12 long he's in the building?

13 MR. ROTHSCHILD: Because, as I pointed out  
14 in the brief, basically, the invitee stands in the  
15 shoes of the tenant, and they have the right of  
16 ingress, they have the right of egress, they have the  
17 right to use common areas. That's so in common law.

18 JUDGE RIVERA: But it's certainly possible,  
19 at some point in time, that the tenant no longer  
20 invites the person, right, that they rescind the  
21 invitation.

22 MR. ROTHSCHILD: Absolutely, Your Honor.  
23 However, that is a determination made by the tenant  
24 and not by the landlord, because the tenant actually  
25 is in superior right of possession.

1 JUDGE RIVERA: But why isn't it possible  
2 that - - - that on the date of the arrest, at that  
3 point, the police officer may have believed that it  
4 was rescinded?

5 MR. ROTHSCHILD: Well, because there was no  
6 - - - there was no cause for him to believe that,  
7 given the fact that he had - - - I believe the  
8 testimony was that he had threatened to put Ms.  
9 Bradley - - - to have Ms. Bradley evicted because of  
10 Mr. Finch's - - -

11 JUDGE SMITH: Where - - -

12 MR. ROTHSCHILD: - - - part in this.

13 JUDGE SMITH: You said a minute ago there  
14 was a finding that the police knew. Where is it?

15 MR. ROTHSCHILD: Page 12 of the record,  
16 Your Honor.

17 JUDGE SMITH: Page 12, thanks.

18 MR. ROTHSCHILD: 12 of the appendix.

19 JUDGE PIGOTT: Was that by the county  
20 court?

21 MR. ROTHSCHILD: That was the county  
22 court's determination. They found that the police  
23 were well aware of Mr. Finch's status as an invitee.

24 JUDGE ABDUS-SALAAM: Counsel, I'd like to  
25 take a step backward on, you know, just procedurally.

1 Did you preserve this issue - - -

2 MR. ROTHSCHILD: Your Honor, absolute - - -

3 JUDGE ABDUS-SALAAM: - - - that you're now  
4 arguing? How - - - how so?

5 MR. ROTHSCHILD: Well, first of all, from -  
6 - - from the get-go, this was preserved. I believe  
7 the motion was made at one of the arraignments, this  
8 is not a trespass. There were written motions made  
9 to dismiss both the trespass and the resisting arrest  
10 on page 52 of the record.

11 In the trial order of dismissal motion,  
12 defense counsel said if People have failed to make  
13 out a prima facie case - - - and that's page 520 on -  
14 - - on page 522, if you look at the exact language,  
15 defense counsel says, "There is nothing to show.  
16 There was no good-faith basis on the part of  
17 Detective Quatrone, to believe that Nature Finch had  
18 committed a crime." No good-faith basis. That's  
19 probable cause. That's exactly why we're here today,  
20 Your Honor.

21 JUDGE PIGOTT: Mr. Rothschild, there was  
22 something in the record that escapes me, with respect  
23 to keys; did he have a key?

24 MR. ROTHSCHILD: He did have the keys. As  
25 a matter of fact, they took the keys off of him the

1 first time, during - - - during the first arrest, and  
2 they had to return them to Ms. Bradley. So that's  
3 another factor showing the fact that they knew that  
4 he had permission to be on the premises. But - - -

5 JUDGE ABDUS-SALAAM: Well - - -

6 JUDGE RIVERA: Well, it's certainly  
7 possible - - -

8 JUDGE ABDUS-SALAAM: I'm sorry - - -

9 JUDGE RIVERA: - - - that he might not - -  
10 - he might be an invitee, but he doesn't have rights  
11 to have a key - - -

12 MR. ROTHSCHILD: Well, she had given - - -

13 JUDGE RIVERA: - - - is that not correct?

14 MR. ROTHSCHILD: True, but she had given  
15 him a key, and that was - - -

16 JUDGE RIVERA: But that might have been in  
17 breach of the lease, correct?

18 MR. ROTHSCHILD: Your Honor, I don't  
19 believe there was any testimony to that effect, first  
20 of all. And second of all, I don't know how that  
21 affects his status as - - -

22 JUDGE RIVERA: Okay.

23 MR. ROTHSCHILD: - - - as - - - or the  
24 People's claim that he's a trespasser, just as the  
25 posting of signs or the - - - or the repeated

1 warnings that you're not allowed to be here; just  
2 because you repeat a lie - - -

3 JUDGE SMITH: As a matter of - - -

4 MR. ROTHSCHILD: - - - doesn't make it  
5 true.

6 JUDGE SMITH: As a matter of practice, is  
7 it - - - I mean, and I really don't - - - I actually  
8 don't know the answer to the question, for a change.  
9 The - - - is it sometimes true that the - - - that in  
10 an - - - an apartment complex of this kind, the - - -  
11 the landlord or the - - - the management will reserve  
12 the right to exclude even people that particular  
13 tenants might invite?

14 MR. ROTHSCHILD: If that was done in the  
15 lease, yes, they - - - they may do that. I believe  
16 that's done in New York City for people who are  
17 charged with crimes, drug possession, gun possession.

18 JUDGE SMITH: I mean, I guess what I'm  
19 getting at is couldn't the - - - even though there's  
20 no evidence in this record that such a lease existed,  
21 how do you - - - how can you - - - we have an  
22 officer, on the 12th of May, where the building  
23 manager is telling him that person is not allowed to  
24 be here. How is the officer supposed to know that  
25 the manager can't veto the tenant's choice?



1 do you say it's a mistake of law? You said earlier -  
2 - - and I - - - I want to get back to my preservation  
3 issue because I know I need to follow that up - - -

4 MR. ROTHSCHILD: Okay.

5 JUDGE ABDUS-SALAAM: - - - but just on  
6 this, you're saying that the - - - the tenant had the  
7 superior right to invite people into the premises.  
8 Have you seen Ms. Bradley's lease?

9 MR. ROTHSCHILD: No, Your Honor, but - - -

10 JUDGE ABDUS-SALAAM: Then how do you know  
11 that she didn't have a restriction on the lease, and  
12 Officer Quatrone is dealing with Ms. Smith, who's the  
13 landlord's agent, who's telling him we've excluded  
14 this guy. Ms. Bradley, Ms. Smith, and the defendant  
15 had a meeting where they - - - it was pretty clear  
16 that Bradley could only invite him to - - - you know,  
17 to visit his son. You say he's her paramour, but  
18 that was - - - the understanding was that he was only  
19 going to be there to visit his son, not necessarily  
20 Bradley, or she had to accompany him in the premises  
21 wherever he was or he had to be accompanied by the  
22 son. And they all agreed to that.

23 MR. ROTHSCHILD: Well, Your Honor, first of  
24 all - - -

25 JUDGE ABDUS-SALAAM: Is that correct?

1                   MR. ROTHSCHILD: I don't believe that's  
2 correct, Your Honor. I believe that was the  
3 landlord's interpretation. That was the landlord's  
4 testimony regarding that.

5                   But vis-a-vis - - - regarding - - -  
6 regarding this, it's the public policy aspect that is  
7 crucial, because basically allowing them - - - there  
8 - - - New York, I believe, has the highest percentage  
9 of people who are apartment dwellers. And taking the  
10 People's - - - taking the People's position would  
11 essentially subject tenants, their right to invite  
12 people, to the arbitrary whims of police. That  
13 frustrates the purpose of the law. It frustrates - -  
14 - and the law essentially is not complex. I can  
15 explain it in two sentences: When a person is a  
16 guest of the tenant, they are a licensee and not a  
17 trespasser, and that license cannot be extinguished  
18 merely by the arbitrary order of the police.

19                  JUDGE GRAFFEO: What's the - - - what  
20 weight are we to give to the discussion of the  
21 archives lists here that listed his name?

22                  MR. ROTHSCHILD: It's irrelevant, Your  
23 Honor, because essentially the landlord doesn't have  
24 the authority to exclude him. I mean, if you want to  
25 put it in the lease, fine. If there was some other

1           superseding, intervening event, like Mr. Finch's  
2           arrest for a gun or drugs - - -

3                         JUDGE ABDUS-SALAAM: That brings me back to  
4           the preservation issue; aren't you arguing something  
5           different here than you did when you made your trial  
6           order of dismissal? Didn't you argue that the  
7           premises were closed off by a fence and there were  
8           some other issues that suggested that it was open to  
9           the public, not that the landlord did not have  
10          authority to keep him off the premises?

11                        MR. ROTHSCHILD: No, Your Honor, not  
12          looking at in total, because if you look at the  
13          repeated motions that were made to dismiss the  
14          trespass - - - the trespass, which were denied by the  
15          trial court, and if you take a look at the language  
16          of the trial order of dismissal motion, which says  
17          that the officer did not have a good-faith basis on  
18          his part to - - - to believe that he had committed a  
19          crime. And then she goes on - - - and then counsel  
20          goes on to talk about the area being fenced and - - -  
21          and what not.

22                        CHIEF JUDGE LIPPMAN: Okay.

23                        MR. ROTHSCHILD: But the reality was the  
24          court was more than well aware, under - - - under  
25          Gray, under 470.05, and basically they just chose - -

1 - instead of taking that into account, they chose to  
2 ignore that law, and we would - - -

3 CHIEF JUDGE LIPPMAN: Okay, counsel.

4 MR. ROTHSCHILD: - - - submit reversing - -  
5 -

6 CHIEF JUDGE LIPPMAN: Thanks, counsel.

7 MR. ROTHSCHILD: Thank you.

8 CHIEF JUDGE LIPPMAN: Counselor?

9 MR. CENTRA: Good afternoon, Your Honors.  
10 Joseph Centra. I'm representing the People of the  
11 State of New York.

12 As you know, this case involves an  
13 individual, Nature Finch, who on three occasions was  
14 arrested for trespassing on the premise of Parkside  
15 Commons. Each time that he was arrested, he was  
16 arrested by the same officer, Officer Quatrone.

17 JUDGE SMITH: We now know, or at least  
18 we're bound to assume, that he did not commit the  
19 crime that he was arrested for.

20 MR. CENTRA: That's correct, Judge. And in  
21 regards to the - - - the resisting charge that he's  
22 left with, that's irrelevant. The - - - for - - -

23 JUDGE GRAFFEO: Well, why shouldn't that  
24 charge fall, since the other three charges are off  
25 the table?

1 MR. CENTRA: Because for those charges,  
2 there's a different burden of proof; there's beyond a  
3 reasonable doubt. For him to be arrested for  
4 resisting arrest, there is only probable cause  
5 needed. In this case, it was the same officer who  
6 arrested on each occasion. He had warned this  
7 individual that he wasn't supposed to be there. He  
8 had a written statement from the manager of the  
9 complex that - - -

10 JUDGE GRAFFEO: But the tenant did give him  
11 notice, at one of these arrests, that he was her  
12 guest.

13 MR. CENTRA: According to the - - -  
14 according to her testimony. According to Officer  
15 Quatrone's testimony, he was never told.

16 JUDGE SMITH: Well, didn't the other  
17 officer give testimony that sounds a lot like he's  
18 conceding the point? I mean, they asked the other  
19 officer, wasn't she screaming, he's my guest? And  
20 the answer is "She was more obscene than that". But  
21 it sounds like he wasn't disagreeing with the  
22 substance?

23 MR. CENTRA: That may be the fact, but  
24 Officer Quatrone, who was the only one present at  
25 this arrest, didn't testify to that - - -

1 JUDGE SMITH: You mean you can't impute  
2 Officer what's-his-name's - - - Root (ph.)? What is  
3 his name? His - - - his knowledge to Quatrone?

4 MR. CENTRA: I'd assume - - - I - - - I  
5 can't testify to the fact that they had spoken to  
6 each other, Judge. I can only testify to what's on  
7 the record, and that Detective Quatrone, in this  
8 instance, stated that he was unaware that this  
9 individual was an invitee of Ms. Bradley. That, in  
10 and of itself - - - you know, he arrested him three  
11 different occasions.

12 JUDGE SMITH: If he did know it, or at - -  
13 - yeah, if - - - well, let's see. Suppose - - - take  
14 out the fellow officer problem. Suppose Quatrone has  
15 heard Bradley say, on April something, that he's my  
16 guest; does that - - - is the arrest bad?

17 MR. CENTRA: No, we state it's not, Judge.  
18 Just because she's stating that he's an invitee - - -  
19 Officer Quatrone also had the statement by the office  
20 - - - by the Parkside manager.

21 JUDGE PIGOTT: Nicole Smith?

22 MR. CENTRA: Nicole Smith.

23 JUDGE PIGOTT: What was the date of that?

24 MR. CENTRA: I don't know the exact date of  
25 it; I know it was after the first arrest and between

1 the second arrest. So this - - -

2 JUDGE PIGOTT: And what did it say?

3 MR. CENTRA: I believe it said, Judge, that  
4 Nature Finch - - - I mean, I'm going to sum it up - -  
5 - that Nature Finch was no longer allowed on the  
6 property, and that they gave - - - and that Parkside  
7 gave the Syracuse police officers authority to arrest  
8 him if he was spotted on the - - -

9 JUDGE PIGOTT: Is that in the record?

10 MR. CENTRA: The - - - the actual trespass?

11 JUDGE PIGOTT: That statement?

12 MR. CENTRA: I don't know if the actual  
13 statement's in the record, Judge, but I believe the -  
14 - - I mean, the statement given - - -

15 JUDGE SMITH: The manager testified to  
16 that, essentially.

17 MR. CENTRA: The manager testified, and I  
18 believe the statement may also be in the record.

19 JUDGE GRAFFEO: Is there a difference - - -  
20 there was something about a written notice, that  
21 there wasn't a written notice yet?

22 MR. CENTRA: I'm not sure if there's a  
23 written notice; I know there is a written statement  
24 stating - - - and this was served on or given to  
25 Detective Quatrone by Nicole Smith - - - stating that

1 this individual, Nature Finch, was not supposed to be  
2 on the premises. And this statement was given in  
3 between the first arrest, on April 28th, and the  
4 second arrest on May 12th, 2009.

5 So what we're arguing is that this officer  
6 had more than enough probable cause to arrest this  
7 individual. He was involved in all of the arrests.

8 JUDGE SMITH: What about the county court  
9 finding that your adversary points out, that the  
10 police were well aware that he was a guest, that he  
11 was a licensee?

12 MR. CENTRA: They state that, and - - - and  
13 Judge, for the sake of argument, if that's how you  
14 want to interpret it - - -

15 JUDGE SMITH: Well, he - - -

16 MR. CENTRA: Well, it's what they - - -

17 JUDGE SMITH: Well, he does. I mean, I  
18 admit I'm - - -

19 MR. CENTRA: If he says it - - -

20 JUDGE SMITH: - - - but it sure does say  
21 it.

22 JUDGE GRAFFEO: He does say clearly.

23 MR. CENTRA: Even if the order was legally  
24 invalid, the defendant was supposed to be there as an  
25 invitee of Calleasha Bradley and there to watch his

1 son. On each instance, there was no children in  
2 sight, and Ms. Bradley wasn't in sight. He was there  
3 - - -

4 JUDGE PIGOTT: That's not the standard in  
5 discerning whether somebody's a guest or not, right?  
6 I mean, if he's walking toward the building, they may  
7 not - - - that may not be true.

8 MR. CENTRA: I understand that, Judge, but  
9 on each of these occasions - - -

10 JUDGE PIGOTT: It sounds like they were  
11 getting sick and tired of this guy, and - - - and I'm  
12 not saying they were right or wrong, but, you know,  
13 arresting him three times and - - - and then the  
14 county court said, fine, that Finch was a guest of  
15 Ms. Bradley and the police knew it, and that his  
16 license could not be extinguished by an arbitrary  
17 stay away order, and that the tenant's rights to have  
18 guests can't be extinguished by any such order, you  
19 wonder where the probable cause then - - - the  
20 reasonable probable cause exists.

21 MR. CENTRA: It existed with the actual  
22 officer, Judge.

23 JUDGE PIGOTT: Because they knew he was a  
24 guest, they nevertheless could have done that?

25 MR. CENTRA: Not that he was - - - could

1           you repeat the question? I'm sorry, Judge.

2                   JUDGE PIGOTT: Well, the county court said  
3           Finch was a guest of Ms. Bradley and that the police  
4           knew that; that his license could not be extinguished  
5           by an arbitrary stay away order; that the tenant's  
6           right to have guests can't be extinguished by such an  
7           order; and therefore, they had no probable cause.  
8           And if they didn't, then doesn't this have to fall?

9                   MR. CENTRA: Judge, and we're - - - we're  
10          stating that he did. I mean, this has to go to the  
11          mentality of this one officer, and due to his  
12          testimony - - - and that's what I'm going off of - -  
13          - he states that he - - - that he did not know that  
14          he - - - that this individual was an invitee of Ms.  
15          Bradley. So - - -

16                  JUDGE ABDUS-SALAAM: Is this the same  
17          argument - - - the I asked your adversary about  
18          preservation of the argument he's making now; is this  
19          the same argument that they made below, or is this a  
20          different argument, in your view?

21                  MR. CENTRA: I believe that the argument  
22          they made was more of a blanket argument, and I think  
23          they more focused on the fact that this area of  
24          Parkside Commons was not an enclosed area, as stated  
25          in the criminal trespass statute, that they were

1           arguing that because this area wasn't fully - - -  
2           fully enclosed by the gates, that's why these should  
3           be dismissed.

4                    JUDGE ABDUS-SALAAM:  Not that the - - -  
5           that the landlord didn't have authority to keep him  
6           off the premises because Ms. Bradley made him a  
7           licensee?

8                    MR. CENTRA:  In my recollection of the  
9           record, Judge, I don't believe that that was ever - -  
10          -

11                   JUDGE SMITH:  Do you argue that the police  
12          were entitled to rely on - - - on Nicole Smith's  
13          assertion of her own authority?  Basically they say  
14          she - - - she's the manager, she says she can keep  
15          him out, we aren't going to check the lease, we're  
16          going to take her word for it?

17                    MR. CENTRA:  I believe that they could make  
18          that assumption.  They've - - - it seems that they've  
19          dealt with this individual on a - - - a number of  
20          occasions, that there was actually a no-trespass  
21          list, and this individual was on it.

22                    JUDGE SMITH:  But of course, it now looks  
23          as though she had no right to put him on it.  At  
24          least if she did, they didn't - - - they didn't prove  
25          it.  But you're saying that the police didn't have to

1 know that at the time?

2 MR. CENTRA: Well, we also stated in our  
3 brief, with People v. Leonard, that owners of semi-  
4 public property do have a right to exclude people  
5 from these premises. And we submit that Ms. - - -

6 JUDGE SMITH: So assuming there's no  
7 provision - - - I have a lease, there's no provision  
8 in my lease that's anywhere relevant. I want to  
9 invite someone - - - someone loud and obnoxious as my  
10 guest in my apartment, can that - - - can that guest  
11 - - - is that guest free to wander around the public  
12 areas, to go - - - to go in the hall, the laundry  
13 room, the parking lot?

14 MR. CENTRA: No, that guest should be a  
15 visitor of, you know, yourself, on the property with  
16 you, either going to see you, coming from seeing you  
17 - - -

18 JUDGE SMITH: Can I - - -

19 MR. CENTRA: - - - but they shouldn't be  
20 able to - - -

21 JUDGE SMITH: Can I say, do me a favor, go  
22 out to the parking lot and see whether my car has a -  
23 - - has a dent in it?

24 MR. CENTRA: Sure, Judge.

25 JUDGE SMITH: And he can - - - he's free to

1 go, right?

2 MR. CENTRA: Yes.

3 JUDGE SMITH: So my authority to invite  
4 that guest extends to the common areas of the  
5 building.

6 MR. CENTRA: It extends, not for loitering  
7 purposes, as in the first instance. He was found - -  
8 -

9 JUDGE SMITH: So is the fact that this was  
10 loitering, whatever loitering is, is that critical to  
11 the - - - to the validity of the arrest?

12 MR. CENTRA: Yes, each time that they  
13 arrested him, it didn't seem like he was - - -

14 JUDGE SMITH: So okay, now I've got to ask  
15 you what's loitering?

16 MR. CENTRA: I guess, Judge, being in a - -  
17 -

18 JUDGE SMITH: Acting like you're up to no  
19 good.

20 MR. CENTRA: Yeah.

21 JUDGE SMITH: But you see the - - - you see  
22 - - -

23 MR. CENTRA: I hear - - -

24 JUDGE SMITH: I see what you mean, but you  
25 see what I mean.

1 MR. CENTRA: I do.

2 JUDGE SMITH: And there could be a problem  
3 with that.

4 MR. CENTRA: Yes, Judge.

5 JUDGE ABDUS-SALAAM: Well, this case was  
6 Mr. Finch coming out of a car in that parking lot,  
7 like he was about to go into the building or - - - or  
8 leaving the building and going to a car? Did they  
9 find any car keys on him?

10 MR. CENTRA: I don't believe so. Are we  
11 speaking about the third arrest that led to the - - -

12 JUDGE ABDUS-SALAAM: The one that led to  
13 the - - -

14 MR. CENTRA: - - - to the resist - - -

15 JUDGE ABDUS-SALAAM: - - - resisting arrest  
16 charge, yes.

17 MR. CENTRA: I don't believe so. From my  
18 interpretation of the - - - the record, it appeared  
19 that he was in the - - - in the parking lot by  
20 himself, and that's when Detective Quatrone saw him  
21 and told him, I've told you numerous times not to be  
22 here; once again, you're under arrest for criminal  
23 trespass.

24 JUDGE PIGOTT: On the motion to set aside  
25 the verdict, did Nicole Smith participate in that?

1 MR. CENTRA: In the - - - in the trial - -  
2 -

3 JUDGE PIGOTT: In the - - -

4 MR. CENTRA: - - - court, Judge?

5 JUDGE PIGOTT: - - - the subsequent - - -  
6 the subsequent motion to set aside the verdict.

7 JUDGE SMITH: Did she submit an affidavit?

8 MR. CENTRA: I know that she submitted an  
9 affidavit to the police, Judge; I don't believe that  
10 she submitted anything further than that.

11 CHIEF JUDGE LIPPMAN: Okay, counselor,  
12 thanks.

13 MR. CENTRA: Thank you.

14 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

15 MR. ROTHSCHILD: First of all, Mr. - - -  
16 Mr. Finch was loitering on none of these occasions.  
17 First offense, he was getting the mail for her.  
18 Second offense, I believe he was taking care of the  
19 child, but he had given the child to someone else to  
20 take care of in the meantime.

21 JUDGE SMITH: This is his and her  
22 testimony, I assume.

23 MR. ROTHSCHILD: This is his and her  
24 testimony. And the third time, basically, he was  
25 coming back from a meeting with Ms. Bradley.

1                   JUDGE SMITH: Okay. But how is the officer  
2 supposed to know that?

3                   MR. ROTHSCHILD: Well, the officer - - - it  
4 doesn't matter what the officer knows. The officer -  
5 - -

6                   JUDGE SMITH: You're saying if the officer  
7 knows that he's Ms. Bradley's guest, then he should  
8 know that he has a right to be in the common areas.

9                   MR. ROTHSCHILD: Yes, Your Honor,  
10 basically.

11                   First of all, regarding the notice,  
12 Quatrone - - - Officer Quatrone never denied - - -  
13 never denied that Ms. Bradley told him; he just - - -  
14 he just denied that Mr. Finch told him that he was a  
15 guest. And Mr. Finch never said that; it was Ms.  
16 Bradley who was the one screaming it at them.

17                   Secondly, regarding the public policy  
18 aspect, the reason I cited to Ligon in my brief was  
19 to - - - not to show that this was or was not a  
20 trespass, but to show the danger of giving police  
21 officers too much discretion. In Ligon, it was  
22 regarding stop and frisk for probable - - - without  
23 probable cause. And in this case, the danger's even  
24 greater, because you're allowing police to arrest  
25 people for things which are not offenses, based upon

1 their subjective good-faith belief in the law.

2 JUDGE SMITH: And you undoubtedly have a  
3 point, but isn't there also a real strong public  
4 interest in protecting the law-abiding residents, the  
5 peaceful residents of a place like this against  
6 someone who might - - - might very well be an  
7 undesirable visitor?

8 MR. ROTHSCHILD: Not only to protect the  
9 residents, but the residents and their guests, Your  
10 Honor. And - - -

11 JUDGE PIGOTT: Well, it - - -

12 MR. ROTHSCHILD: - - - in this case there  
13 was no proof that he was doing anything that was not  
14 law abiding. And basically they said you can't be  
15 here. Why? Because we say you can't be here.

16 JUDGE PIGOTT: Well, it just seems to me if  
17 - - - you know, if he's arrested three times and  
18 acquitted on all three, at some - - - at some point  
19 somebody's missing something.

20 MR. ROTHSCHILD: Well, true, Your Honor,  
21 but based upon the record that we have here, we - - -  
22 there is not showing - - - under Leonard, the  
23 requirement is not just what opposing counsel said,  
24 but they have to show a legitimate basis for the  
25 arrest, and that doesn't impact upon public policy

1 and it doesn't infringe upon the person's  
2 Constitutional or statutory rights to establish - - -

3 JUDGE ABDUS-SALAAM: Do they have to show a  
4 legitimate basis, or that the officer believed that  
5 he had a legitimate basis? If he believes that Ms.  
6 Smith, who's the manager of this complex, has the  
7 right to exclude this person, and he - - - he knows  
8 that, even assuming that the tenant says, well, he's  
9 my guest, is that what is necessary, or do they have  
10 to know the whole public policy thing?

11 MR. ROTHSCHILD: I think you need to know  
12 what the law of trespass is, because otherwise the  
13 police have no incentive to correctly enforce the  
14 law. Well, I believe that the - - - that the  
15 individual was trespassing because he was tall or I  
16 didn't like him or I didn't like the look of his  
17 face; that's not a basis - - -

18 JUDGE PIGOTT: One thing before you go,  
19 because your light's on. There was a motion to set  
20 aside the verdict. Are you familiar with that?

21 MR. ROTHSCHILD: Yes, Your Honor.

22 JUDGE PIGOTT: Was Nicole Smith part of  
23 that?

24 MR. ROTHSCHILD: She was not.

25 JUDGE PIGOTT: Okay.

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MR. ROTHSCHILD: She was not part and  
parcel of that.

CHIEF JUDGE LIPPMAN: Okay, counsel.

MR. ROTHSCHILD: Thank you, Your Honors.

CHIEF JUDGE LIPPMAN: Thank you, both.

(Court is adjourned)

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

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the court of Appeals of The People of The State of New York v. Nature G. Finch, No. 28 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Sharona Shapiro*

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