

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 101 SSM 9
The People &c.,
Respondent,
v.
Victor Medina,
Appellant.

Submitted by Cliff Gordon, for appellant.
Submitted by Danielle K. Blackaby, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Following a lawful traffic stop, an officer approached defendant's vehicle and spoke to him through his open driver's side window. The officer observed that defendant was

sitting in an unnatural and contorted position, attempting to shield the right side of his body from the officer's view. When the officer asked defendant where he was coming from, defendant provided inconsistent stories.

The issue on appeal, whether the officer's conduct in subsequently requesting consent to search defendant's car conformed with the standards set out in *People v De Bour* (40 NY2d 210 [1976]), presents a mixed question of law and fact and "our review is limited to whether there is evidence in the record supporting the lower courts' determinations" (*People v McIntosh*, 96 NY2d 521, 524 [2001]). County Court found the officer's testimony about defendant's inconsistent statements and behavior credible and sufficient to demonstrate the necessary founded suspicion to request defendant's consent to search the vehicle, and the Appellate Division affirmed (209 AD3d 1059 [3d Dept 2022]). The record supports these holdings (*see People v Battaglia*, 86 NY2d 755 [1995], citing *People v Hollman*, 79 NY2d 181, 191-192 [1992]). Defendant's remaining contentions are without merit.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur.

Decided November 21, 2023