

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 20

JONES (JOSEPH C.),

Appellant.

20 Eagle Street
Albany, New York
February 11, 2026

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:

JAMES A. HOBBS
Attorney for Appellant
16 East Main Street
Rochester, New York 14614

AMY N. WALENDZIAK
Attorney for Respondent
47 Fitzhugh Street South
Rochester, New York 14614

Christy Wright
Official Court Transcriber

1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Jones.

3 MR. HOBBS: Good afternoon, Your Honors. James
4 Hobbs, on behalf of the appellant, Joseph Jones. If I may,
5 I'd like to reserve three minutes for rebuttal.

6 CHIEF JUDGE WILSON: Yes.

7 MR. HOBBS: The Appellate Division decision in
8 this case sets a precedent that could allow law enforcement
9 to chase, subdue, and arrest anyone who roughly matches a
10 very common height and weight description in a data sheet,
11 and is located in a general area of a vague and
12 questionable tip. Relying on so little, it's not a
13 surprise that the parole investigators in this case chased
14 the wrong man. There - - -

15 JUDGE SINGAS: Can you - - - can you articulate
16 for me, please, what is this standard that you're asking us
17 to apply?

18 MR. HOBBS: I'm asking you to apply reasonable
19 suspicion.

20 JUDGE SINGAS: And why?

21 MR. HOBBS: Why? Because it clarifies what the
22 standard is. Right now, the standard they apply is
23 reasonable, mistaken belief. And that is - - - reasonable
24 suspicion is a more clear version of reasonable belief, and
25 is - - - it promotes consistency.

1 JUDGE HALLIGAN: But why - - - why is that? I'm
2 not sure I understand why you think that's the case.

3 MR. HOBBS: Well - - -

4 JUDGE HALLIGAN: I mean, what I'm really asking
5 you is why do you think that - - - that De Bour applies,
6 and I assume you think it applies because you think it's
7 more protective? Why is it more protective than - - - than
8 the Hill (ph.) standard, in your view?

9 MR. HOBBS: A reasonable - - - reasonable belief
10 exists on a - - - like, on a spectrum depending on how much
11 information you have. If I have very little information,
12 but I have one piece of information that supports my
13 belief, that's - - - that's probably a reasonable belief,
14 Your Honor.

15 JUDGE HALLIGAN: When I look at the cases like
16 Hill and - - - and that apply Hill, it seems to me that the
17 courts have required a fair amount of detail in order to
18 support a reasonable belief. So that's why it's unclear to
19 me why you think it is - - - it is a weaker standard than -
20 - - I take it you're comparing it to De Bour level three,
21 yes?

22 MR. HOBBS: Yes, that's correct.

23 JUDGE HALLIGAN: Yeah.

24 MR. HOBBS: To me the indication that it's a
25 weaker standard is - - - is the Appellate Division decision

1 in this case which contrasts reasonable - - -

2 JUDGE HALLIGAN: Set that aside if you would.
3 And just generally in terms of the way the jurisprudence
4 has evolved, why would it necessarily be weaker?

5 MR. HOBBS: Well, it wouldn't necessarily be
6 weaker. It's so flexible and malleable that it doesn't
7 guide adequately how the court would determine this
8 decision in any given case.

9 JUDGE CANNATARO: Could you - - - for the sake of
10 my clarity, could you give a concrete example of something
11 that might pass the reasonable mistaken belief requirement
12 but wouldn't pass the reasonable suspicion requirement
13 because those two standards to me, you know, after you
14 stare at them for a long time, they look almost identical?

15 MR. HOBBS: Well, I mean - - - I don't know that
16 I can because I think reasonable, mistaken belief could be
17 a - - - a mistaken bit of founded suspicion, or it could be
18 mistaken bit of probable cause, right? You know, it could
19 be anywhere in there.

20 JUDGE SINGAS: You know what, I'm having trouble
21 with transmuted the De Bour factors into an identification
22 of the defendant, right, because when we're talking about
23 De Bour, we're looking at criminality, and what are
24 defendants doing, and what are the police allowed to do as
25 a response to that, but how does that translate to the

1 identity? Because that's what you're asking us to do,
2 right?

3 MR. HOBBS: Right.

4 JUDGE SINGAS: So practically, how does that
5 work? I don't understand we have reasonable suspicion to
6 believe the person who's engaging in criminality is also
7 the person - - - you know what I mean? I just, I don't
8 know, practically or even theoretically, I can't wrap my
9 head around what you're asking is how to - - - the
10 interplay of those factors.

11 MR. HOBBS: I think I should clarify that this -
12 - - this happens all the time. And in fact, I did not
13 emphasize this well enough in my brief, but this court has
14 - - - has applied the standard to level three and level
15 four for the identification component. There's a case
16 cited in my brief, which I didn't discuss well enough. I
17 didn't realize it until now or until a couple of days ago,
18 People v. Balkman. And this is a case decided in 2020 from
19 this court.

20 And it's a parole - - - I mean, a warrant
21 enforcement case. It was a traffic stop based on a match
22 to a warrant - - - existing warrant, prompts the police
23 officer to pull this person over. And what this court held
24 was that the People had the burden of establishing that
25 there was a match, that the match was sufficient to provide

1 reasonable suspicion - - -

2 JUDGE SINGAS: Okay, but in this case - - -

3 MR. HOBBS: - - - that this person was the target
4 of the warrant.

5 JUDGE SINGAS: - - - there's a warrant, right?
6 So the warrant gives you probable cause. So are you asking
7 us to say you need probable cause that it's the right
8 person?

9 MR. HOBBS: No, you need reasonable suspicion
10 that it's the right person.

11 JUDGE SINGAS: So then for here, it doesn't match
12 the De Bour levels?

13 MR. HOBBS: But this is the same case in the
14 traffic stop context. In Balkman, it was you had a
15 warrant, you got a similarity hit to the warrant, but you
16 didn't have proof that that was a good enough match to give
17 you reasonable suspicion.

18 CHIEF JUDGE WILSON: I'm still - - - I'm having
19 trouble with the same thing Judge Singas is having with.
20 So De Bour has four levels. Is it the case that any time I
21 have a warrant, I'm going to be in level three?

22 MR. HOBBS: No. No, I mean, I think - - -

23 CHIEF JUDGE WILSON: Then, how do I tell when I
24 have a warrant what De Bour level I'm in?

25 MR. HOBBS: With respect to identification, you

1 could be at any level, you know? If this person was fully
2 masked in a costume, say, you know, and you couldn't
3 identify any features, you could have - - - you could be
4 holding the warrant and looking at this person and have no
5 idea whether it's - - -

6 JUDGE HALLIGAN: But why wouldn't you - - -

7 JUDGE RIVERA: Okay. So if I'm understanding
8 what you're trying to say - - - if I'm - - - I just want to
9 make sure I understand. Your point is not that a warrant
10 might not give you reasonable suspicion or probable cause
11 to stop someone, it's just the person who you get to stop,
12 which is what this standard is about?

13 MR. HOBBS: Yes.

14 JUDGE RIVERA: When the person you stop doesn't
15 seem to be supported by the description, right? Isn't that
16 where we're going? It's not that if you had found the
17 right person, that you couldn't stop them or approach them?

18 MR. HOBBS: Correct. These - - - identification
19 - - -

20 CHIEF JUDGE WILSON: So what is it about the
21 characteristics of this person known to the officers that
22 puts them at level three instead of two or four there?

23 MR. HOBBS: I don't think they are at level
24 three, meaning that they have a basis for a level three
25 stop. What they do is they conduct a level three intrusion

1 by chasing him, right? That's - - - that is - - -

2 JUDGE GARCIA: Is that what this case is about?
3 It seems to me the facts of this case are a little bit
4 different than your classic Hill example, right? Hill,
5 they arrest the wrong person, and then they find
6 incriminating material, right? And I think that to me
7 seems like the standard looking at cases. There's an
8 arrest. You justify the arrest, right? It's a mistake,
9 but what did you have to make the arrest because the fruits
10 flow from that unlawful arrest.

11 That's really not what happened here. Here, I
12 think you have to justify the chase, right? Because once
13 you justify the chase, and then you have testimony that I
14 saw the guy have a gun in his hand, you have probable cause
15 to arrest him whoever he is, right? So it's just the
16 chase.

17 MR. HOBBS: Correct.

18 JUDGE GARCIA: So when they go up to this person,
19 assuming this isn't a Hill scenario at all, and they go up
20 to this person, and they have certain information
21 indicating that it may be this absconder they have the
22 warrant for. Now, I would say when they approach that,
23 would you agree that they have at least a level two?

24 MR. HOBBS: When the - - -

25 JUDGE GARCIA: Given the description they have,

1 given the information they have from that person, given
2 this person is in the location that the girlfriend said he
3 would be in, can they go up and make a pointed inquiry at
4 that point?

5 MR. HOBBS: I think they could.

6 JUDGE GARCIA: And then he runs?

7 MR. HOBBS: And then he runs. That's correct.

8 JUDGE GARCIA: And taking into account he runs -
9 - -

10 MR. HOBBS: Well - - -

11 JUDGE GARCIA: - - - and the fact - - - we can
12 get into the facts of the running, and I'm sure you'll - -
13 - but let's assume just for the hypothetical first, we'll
14 do it hypothetically, the person runs, then you can figure
15 out, under De Bour, I had a level two reason justification
16 to go up, ask pointed questions, found a suspicion or
17 whatever it is, and then the person runs. So then we look
18 at, okay, what you had for the level two plus the running,
19 does that get you the level three pursuit? And to me,
20 doesn't that seem like what this case is about?

21 MR. HOBBS: That is what this case is about. And
22 I don't think we get to the level three.

23 JUDGE CANNATARO: We do - - -

24 JUDGE GARCIA: Why doesn't the flight give you
25 level three here?

1 MR. HOBBS: Well, what we - - - the record here
2 is absent a lot of information. Well, we don't have
3 testimony from the approaching officers and what their
4 observations are.

5 JUDGE HALLIGAN: Would you agree that if we did
6 have testimony from the approaching officer, and if the
7 approaching officer testified that he rolled down the
8 window and said, hey, I think that the arrest warrant was
9 for - - - is Gerard or Gerald Carter, right?

10 MR. HOBBS: Gerald Carter.

11 JUDGE HALLIGAN: Hey, Gerald Carter, and then the
12 defendant turned and looked and then ran. Would that be
13 enough to justify the stop?

14 MR. HOBBS: That would get you closer, I think.
15 And I might concede that it would. I don't know.

16 JUDGE GARCIA: This - - - that issue - - -

17 JUDGE RIVERA: Can I get back to why you say this
18 is level two? Because I thought your argument was he
19 doesn't match the description. Why is it a level two? Or
20 perhaps I misunderstood your argument.

21 MR. HOBBS: No. Maybe I shouldn't concede that
22 it's level two. I don't know. I mean, it's somewhere
23 between level one and two. I don't argue that they
24 couldn't ask him and approach him and ask him some
25 questions. It's a ballpark match. People - - -it's hard

1 to tell the difference between 5'11" and 6'1" and some - -
2 - if you're wearing shoes - - -

3 JUDGE GARCIA: But you also do have the location
4 information here. You have the location information. But
5 getting back to the point, I mean, I don't - - - as I read
6 the hearing, don't see that this issue of what was said and
7 when it was said to the defendant before he fled, it was
8 being really litigated because it seems like there's two
9 issues going on down there. You've got the gun that's
10 disposed of in the flight, and you've got the drugs I
11 think, that are recovered. And there's a little confusion
12 over exactly what goes to what.

13 But the only testimony I could find in the
14 hearing, and it's not explored at all, is Madison saying -
15 - - is asked approximately how far away were you from this
16 individual when someone from parole was speaking with him,
17 and he says, twenty yards. So the only testimony that I
18 can really find directly in the record is someone who's
19 twenty yards away, sees a parole officer talking to the
20 defendant before he fly - - - before he takes off; isn't
21 that enough?

22 MR. HOBBS: I don't know what the talking to
23 refers to. Is it one word? Is it a conversation? It
24 sounds like it happens quicker than that.

25 CHIEF JUDGE WILSON: Is there anything in the

1 record that indicates that the defendant knew that the
2 person he was speaking to was a parole officer?

3 MR. HOBBS: No, no. The - - - you know, the
4 testimony suggests that they were in unmarked cars and not
5 in uniform. We don't know what the parole officer who
6 approached said to him, whether he said, hey, Mr. Carter,
7 or are you Mr. Carter? Hey, this is parole. We don't know
8 anything. There's no testimony to that.

9 CHIEF JUDGE WILSON: So if he had said that, if
10 he'd said - - - identified himself as a parole officer,
11 said, I'm looking for Mr. Carter, is that you, and the guy
12 runs, then what?

13 MR. HOBBS: It's a different case. I mean - - -

14 CHIEF JUDGE WILSON: Yeah. And?

15 MR. HOBBS: Yeah, it suggests that you might
16 infer that the reason he's running is because he's a parole
17 absconder. But that's not the facts we have here. I see
18 my time is up, if no further questions.

19 CHIEF JUDGE WILSON: Thank you.

20 MS. WALENDZIAK: Good afternoon. Amy Walendziak
21 on behalf of the People. I - - -

22 JUDGE HALLIGAN: Can I ask you to just jump right
23 in and address the question of the right - - - the right
24 test? I mean, I understand why you argue for Hill, but
25 Hill - - - and I think most - - - many of the cases that

1 apply it don't occur in the context of street encounters,
2 right? And - - -

3 MS. WALENDZIAK: They don't, Your Honor, as I
4 read them.

5 JUDGE HALLIGAN: Yes, I agree. And so De Bour
6 sets forth protections in that context. So what do we do
7 about how to fit it? I mean, Hill doesn't exactly tell us
8 what to do with respect to a street encounter.

9 MS. WALENDZIAK: No, not on the facts of Hill,
10 Your Honor. I agree with that. But what I think we get
11 from the test in Hill is that this first step, the probable
12 cause to arrest the person that they're actually seeking, I
13 think that that does - - - it's essentially a De Bour
14 analysis with the additional element of making that
15 reasonable mistake on the identity part, so - - -

16 JUDGE HALLIGAN: Do you do you agree that if
17 there is not a reasonable basis, you can't - - - you know,
18 you can't proceed relying on that warrant at all, right?

19 MS. WALENDZIAK: Right. So I think if - - - say
20 the person that they encountered on the street that was
21 defendant here, if that had been a five foot two woman that
22 didn't even remotely match the description of the parole
23 absconder, I don't think that there would have been a
24 reasonable mistake of identity.

25 JUDGE HALLIGAN: But it seems to me De Bour

1 operates on a continuum, right? And so too does reasonable
2 belief, right? You could have maybe a hunch. You could be
3 virtually certain. And there's a lot in between. So how
4 do we accommodate that?

5 MS. WALENDZIAK: Well, I think we do accommodate
6 that with the Hill test, and I - - -

7 JUDGE HALLIGAN: How so?

8 MS. WALENDZIAK: So again, there is the probable
9 cause analysis that is done in the first step of the Hill
10 test.

11 JUDGE HALLIGAN: But that has nothing to do with
12 whether the individual is in fact the person identified in
13 the warrant.

14 MS. WALENDZIAK: No, no, it doesn't. But again,
15 I think that second step, I believe, is what's getting at
16 your question, Judge Halligan, is that it has to be a
17 reasonable mistake of fact under the circumstances of the
18 case presented. And what may be a reasonable mistake in
19 one set of facts might not apply in another. And that's
20 why it's a consideration by the suppression court of a
21 totality of the circumstances that I believe is encompassed
22 in this reasonable mistake of identity.

23 JUDGE CANNATARO: Can I ask you the same question
24 that was asked of the other side, which is how does the De
25 Bour framework plug into a situation like this? Because it

1 is a street encounter, but it's a street encounter with a
2 person holding a warrant, and that seems to be a mismatch
3 with De Bour. So how do you make it work?

4 MS. WALENDZIAK: I don't disagree that this is a
5 somewhat unusual set of circumstances, Judge Cannataro,
6 because, again, that arrest warrant authorizes the parole
7 investigators in this case to conduct a forcible seizure of
8 Gerald Carter, who is the person they're actually looking
9 for.

10 JUDGE RIVERA: So all De Bour asks is whether or
11 not when you went up to the wrong person, allegedly, right?
12 The argument is it's the wrong person - - -

13 MS. WALENDZIAK: It was the wrong person.

14 JUDGE RIVERA: - - - right? Did you have a
15 reasonable suspicion about whether or not that was the
16 person that's listed in the warrant?

17 MS. WALENDZIAK: And again, I think that the - -
18 -

19 JUDGE RIVERA: It fits seamlessly. I don't even
20 understand this argument.

21 MS. WALENDZIAK: Again, I do think that De Bour
22 is - - - it is wrapped up in this Hill test. I think it is
23 essentially a De Bour analysis with the - - -

24 JUDGE RIVERA: How often has the U.S. Supreme
25 Court referred to Hill since its decision - - - since it

1 rendered that opinion?

2 MS. WALENDZIAK: I believe it's referred to it
3 several times, I think, in Heien v. North Carolina, which
4 has been cited by this court, and I believe I'd cited to a
5 couple other cases - - -

6 JUDGE RIVERA: Are you trying to say we've
7 already somehow sub silentio adopted Hill?

8 MS. WALENDZIAK: I'm not saying you've adopted
9 it, but I suppose this reasonable mistake has been brought
10 up in other contexts.

11 JUDGE RIVERA: Yes, in other contexts?

12 MS. WALENDZIAK: And various - - -

13 JUDGE RIVERA: Correct.

14 MS. WALENDZIAK: Yes.

15 JUDGE RIVERA: Guthrie is an example. Sure.

16 CHIEF JUDGE WILSON: But when we're thinking
17 about whether the officer made a reasonable mistake, do we
18 take into account other things the officer could have done?

19 MS. WALENDZIAK: I'm sorry, Chief Judge Wilson, I
20 don't - - -

21 CHIEF JUDGE WILSON: Sure. For example, the
22 officer could have said, are you Mr. Carter? Or could have
23 said, would you mind taking your ski mask off? I'm a
24 parole officer. I'm looking for somebody.

25 MS. WALENDZIAK: Yes.

1 CHIEF JUDGE WILSON: So when we're asking whether
2 the mistake is reasonable, do we think about other things
3 the officer could have done short of chasing somebody?

4 MS. WALENDZIAK: I think we can take that into
5 consideration. But again, I think we have to look at
6 everything that was before the parole investigators in this
7 situation and - - -

8 JUDGE HALLIGAN: But we don't know that actually,
9 because the officer that made the approach didn't testify.
10 I mean, we have no, I don't think, any information on the
11 record about that specific interaction, do we?

12 MS. WALENDZIAK: If I may, I - - -

13 JUDGE RIVERA: And why isn't the same question
14 about what one could or could not have done fit under
15 reasonable suspicion under De Bour? It's the same thing.
16 I still do not understand why we would adopt something
17 under Hill when the law seems to fit exactly right.

18 MS. WALENDZIAK: Well, I don't think that Hill -
19 - -

20 JUDGE RIVERA: Despite my concerns about De Bour.

21 MS. WALENDZIAK: Yes, well, I think that - - - I
22 don't think that Hill and De Bour are necessarily
23 different. Again, I - - -

24 JUDGE RIVERA: So then why argue for us adopting
25 Hill? You must think there's something different in Hill.

1 The courts below must think there's something different in
2 Hill.

3 MS. WALENDZIAK: Well, I don't know that they - -
4 -

5 JUDGE RIVERA: I mean, you yourself said Hill - -
6 - I'm not - - - I'm getting as close as I can. Hill is the
7 De Bour analysis plus a reasonable mistake.

8 MS. WALENDZIAK: Yes, and I think that - - -

9 JUDGE RIVERA: So you've got like De Bour plus.

10 MS. WALENDZIAK: I think it is De Bour plus
11 because again in this - - - well, and I say that because of
12 the facts of this case because we aren't - - - we aren't
13 dealing with a typical street encounter where - - - the
14 parole investigator - - - investigators did not approach
15 Joseph Jones because they thought that Joseph Jones in
16 particular was committing a crime. They approached Joseph
17 Jones because they thought he was Gerald Carter, who they
18 had an arrest warrant for. And if they had - - - if they
19 had approached Gerald Carter, I don't think we would be
20 here having this - - -

21 JUDGE RIVERA: Yeah, but De Bour covers whatever
22 reason you're approaching someone.

23 MS. WALENDZIAK: Well, and I - - -

24 JUDGE RIVERA: And that goes to whether or not
25 it's reasonable suspicion.

1 MS. WALENDZIAK: I think we're - - - I think that
2 with - - - with this test, we are essentially saying, you
3 know, they - - - with the warrant they did have probable
4 cause to arrest Gerald Carter.

5 JUDGE RIVERA: Sure.

6 MS. WALENDZIAK: Which I don't think anybody is -
7 - -

8 JUDGE RIVERA: He's not the person they arrested.

9 MS. WALENDZIAK: Not the person they arrested.
10 But again, they made a reasonable mistake of fact in
11 thinking that they were approaching Gerald Carter.

12 JUDGE RIVERA: Though, isn't that the rub? Is it
13 reasonable? We're back to is it reasonable suspicion that
14 that is indeed Mr. Carter.

15 MS. WALENDZIAK: Yes. And that - - - I don't
16 think that there's necessarily a difference between
17 reasonable suspicion and then the reasonable mistake of
18 fact. I think that we're kind of saying the same thing,
19 but analyzing it in two slightly different steps. And I
20 recognize that the record in this case - - -

21 JUDGE RIVERA: Then, why can't we just call it De
22 Bour? Why don't we just say it's just whether or not they
23 had reasonable suspicion under all these circumstances?

24 MS. WALENDZIAK: I think we could and we are
25 saying the same thing, just analyzing it, I suppose, in two

1 different steps versus - - -

2 JUDGE GARCIA: But I guess my problem with that
3 is De Bour, you have to go step by step. So if we're going
4 to really apply De Bour, then it isn't reasonable suspicion
5 to approach him. It's whatever level two is, is that
6 founded suspicion that criminal activity is afoot or
7 whatever we call it, right? So it's not reasonable
8 suspicion to approach someone under De Bour, because that
9 seems to me that you're melding step two and step three
10 because the person is a fugitive. It's two. Can I go up
11 to you and ask you pointed questions? That's what you need
12 for a two. Then, chase, step three, I need something else.
13 So it seems to me the question here is did you have enough,
14 if we're going to apply De Bour, for a two approach and
15 then a three chase based on facts and circumstances as
16 they're developing over that sequence.

17 And then the other test is Hill, which is
18 reasonable suspicion, you know, the warrant, probable
19 cause, and then your belief that that's the person matching
20 the warrant. So it seems like if you're going to really
21 apply De Bour, then you have to do De Bour analysis step by
22 step, which is two, then three. And they didn't even get
23 to two here because they - - - well, maybe they do. They
24 get - - - they talk to him. We don't even know what was
25 said, as has been pointed out. But then he runs.

1 So I think if you're applying pure federal law,
2 at the point he runs, they can chase. I think that's
3 pretty clear under federal analysis. Under our analysis, I
4 think it becomes perhaps a more factual question and maybe
5 under the federal analysis. But what was said? Do they
6 have enough about what was said? And this case to me then
7 arguably comes down to at that point when he runs, did they
8 have enough to chase him, and why did they have enough to
9 chase him at that point? In your view.

10 JUDGE RIVERA: But if I can just add, the only
11 point of the approach is because I have a warrant and the
12 point is to arrest. The approach is not to get more
13 information to confirm something that might lead to arrest.
14 The point is to arrest if indeed this is Mr. Carter.

15 MS. WALENDZIAK: If - - - yes. And I believe the
16 approach was to arrest Mr. Carter because again - - -

17 JUDGE GARCIA: So you think when they arrest - -
18 - when they approach him here, when they just go up by the
19 side of him in the car, they need probable cause to arrest
20 him at that point; that's your view?

21 MS. WALENDZIAK: No, I'm - - - well, again, I
22 suppose looking at the facts of this case, they're
23 executing an arrest warrant, and so I do think they have
24 that right to approach him and ask, are you Gerald Carter?

25 JUDGE CANNATARO: On what level of De Bour?

1 MS. WALENDZIAK: Under - - - well, again, with
2 the probable - - - because they have - - -

3 CHIEF JUDGE WILSON: But we don't know if that
4 they did that.

5 MS. WALENDZIAK: Well, and if I could - - -

6 CHIEF JUDGE WILSON: That's a problem, no?

7 MS. WALENDZIAK: If I could clarify that point,
8 Your Honor, specifically with this approach discrepancy
9 that I believe came up during the Appellate Division
10 argument. As I read the record, the only question about a
11 - - - the only mention of a conversation between the parole
12 investigators in the first car and Joseph Jones came from a
13 question from the prosecutor. So I did not read the
14 testimony to indicate that there was a conversation or
15 anything spoken to him.

16 JUDGE HALLIGAN: I guess we don't know anything,
17 right, about - - - we - - - let me put it differently
18 maybe. There's nothing in the record to suggest that there
19 was any communication or what it was between the
20 approaching officer and the defendant; is that right?

21 JUDGE GARCIA: I'm sorry. What about page
22 ninety-seven? Approximately how far away were you - - -
23 this is asking Madison. Approximately how far away were
24 you from this individual, the defendant, when someone from
25 parole was speaking with him? Twenty yards.

1 MS. WALENDZIAK: So I read the testimony to
2 indicate that not - - - again, there were the two vehicles
3 with the investigators. I did not read the record to
4 indicate that anybody in that first car actually got out of
5 the car.

6 JUDGE GARCIA: No.

7 MS. WALENDZIAK: And so I don't know that
8 Madison's testimony necessarily establishes that there was
9 a conversation. And I recognized - - - I would - - - I
10 recognize that this record could be clearer on certain
11 points. I cannot dispute that before this court.

12 CHIEF JUDGE WILSON: I mean, I have a real
13 concern that the defendant here may not have known these
14 were officers of any sort, right? I mean, they're all in
15 plain clothes. The cars are unmarked cars. Somebody on
16 the street walks up to them.

17 MS. WALENDZIAK: So - - -

18 CHIEF JUDGE WILSON: And we don't know anything
19 more than that.

20 MS. WALENDZIAK: I do - - - I - - - again, I
21 recognize that they were in an unmarked car. However, I do
22 think there is a little bit of a ambiguity about what
23 exactly they were wearing because the parole investigator
24 says he was wearing his hoodie and jeans and his vest, and
25 I wish that there were more clarifying - - -



1 JUDGE GARCIA: But that person never gets out of
2 the car. So I don't know how you could say the defendant
3 knew he was wearing a vest, right?

4 MS. WALENDZIAK: No. And I don't think that he -
5 - - I don't think the record establishes, per se, that he
6 knew he was running from the parole investigators. I - - -

7 JUDGE CANNATARO: Are you comfortable on this
8 record arguing that someone definitely got out of the car,
9 or is there a possibility that Mr. Jones just saw the car
10 and the occupants and ran?

11 MS. WALENDZIAK: I don't think the record clearly
12 establishes one way or the other, and I think it could - -
13 - I read the record to indicate that nobody got out of the
14 car to speak with him, or got out of the car at all before
15 the officers in the second car started to follow him. And
16 I am not asking this court to adopt a bright line rule that
17 says that every time this particular fact happens, we - - -
18 the suppression is not warranted. I'm asking this court to
19 find that under all the circumstances of this case, that
20 these parole investigators took this particular defendant's
21 flight, along with his similarity to the physical
22 description of the parole - - -

23 JUDGE HALLIGAN: So why does - - - tell me, if
24 you would, why the flight - - - how we deal with the
25 flight. The officer testifies that his understanding was



1 that the defendant was free to leave, right?

2 MS. WALENDZIAK: Yes.

3 JUDGE HALLIGAN: And so are we measuring the
4 officer's reasonable belief at the moment before he flees,
5 or are we supposed to take into account the flight,
6 engaging the reasonable belief, and why?

7 MS. WALENDZIAK: I believe we're supposed to take
8 the flight into consideration in determining whether there
9 is a reasonable belief that this was Gerald Carter,
10 because, again, under the facts of this - - -

11 JUDGE HALLIGAN: But that - - - obviously that
12 happens after the officer's approach, right?

13 MS. WALENDZIAK: Yes, it happens after they pull
14 up alongside of him. And I think it's - - - we have to
15 consider flight in the circumstances of the case that it's
16 presented. And I think under these circumstances, the
17 parole investigators encounter somebody who is in an area
18 where they believe the parole absconder to be. He matches
19 the rough height and weight.

20 CHIEF JUDGE WILSON: Well, they were told he
21 might be there forty-five minutes earlier.

22 MS. WALENDZIAK: Well, I do think that - - -

23 CHIEF JUDGE WILSON: By his girlfriend, who
24 perhaps might not want her boyfriend to - - - father of her
25 child to be caught.

1 MS. WALENDZIAK: She may not - - - she may not,
2 but I also note that the record includes the wanted sheet
3 for the parole absconder, and his address is included in
4 that wanted sheet. And I believe that this court can take
5 judicial notice of the geography of the City of Rochester
6 and the parole - - - the address that she sent them to is -
7 - - it's kind of right across the street from the street
8 that she sent them to. So it's - - -

9 JUDGE HALLIGAN: So the officer says that - - -
10 that he believed the defendant was free to leave, right?
11 And so how do we take that into account when gauging how
12 the flight might have affected the officer's reasonable
13 belief?

14 MS. WALENDZIAK: Well, I think the flight affects
15 that reasonable belief because these parole investigators
16 are looking for somebody who has absconded from parole and
17 therefore has a reason to flee from them. And I think that
18 - - -

19 JUDGE HALLIGAN: They said he was free to leave.

20 MS. WALENDZIAK: Well, I - - -

21 JUDGE HALLIGAN: If I recall the testimony.

22 MS. WALENDZIAK: I'm sorry, Judge Halligan. I
23 don't remember the exact page in the context in which this
24 came up, but I believe this may have been on cross-
25 examination.

1 JUDGE HALLIGAN: I think so, yeah.

2 MS. WALENDZIAK: And I think that if I'm - - - I
3 would, of course, defer to the record, but if I'm recalling
4 that particular section correctly, I think that this,
5 again, was in the context of, what did Joseph Jones have
6 the right to do. Again, if I'm misremembering that, I
7 would defer to the record. And I think that's the - - - a
8 little bit of the problem in this case is that Joseph Jones
9 didn't have an active warrant or anything, but the officers
10 thought that Joseph Jones was the parole absconder. And I
11 think that his flight, coupled with the other circumstances
12 in this case, is what leads them to - - -

13 JUDGE CANNATARO: So if they had been correct and
14 it was Mr. Carter and not Mr. Jones, he wouldn't have had
15 the right to leave. That's the distinction that the
16 officer was making on cross-examination?

17 MS. WALENDZIAK: I think if it had been Gerald
18 Carter that they had encountered, they could have arrested
19 him. And I don't think he would have had any basis to
20 suppress this - - -

21 JUDGE CANNATARO: I thought your argument to
22 Judge Halligan was that because we were talking about Mr.
23 Jones, who turned out not to be the person they were
24 seeking, that he had a right to leave, and the implication
25 of that argument to me would have been that if it was

1 actually Carter, he wouldn't have had a right to leave, but
2 that's not what you're saying?

3 MS. WALENDZIAK: I'm saying Carter would not - -
4 - once they confirmed his identity, he would not have had
5 the right to leave. And I think that again, that's also
6 part of what this chase is meant to do is to confirm that
7 this is, in fact, Gerald Carter. I think that to say
8 otherwise - - - this very well could have been Gerald
9 Carter when they encountered him, and had they not pursued
10 to confirm whether it was in fact a parole absconder that
11 they were looking for, the parole absconder would have gone
12 free.

13 And I think in that scenario, if you have a
14 warrant out for your arrest and you want to avoid detection
15 in public, all you have to do is obscure your identity, and
16 the police can never follow you to confirm that you're the
17 person they're looking for.

18 CHIEF JUDGE WILSON: Well, they can't - - -

19 JUDGE RIVERA: I mean, they can. They just have
20 to say something. And if we knew in this record what they
21 said, or try to confirm the identification.

22 MS. WALENDZIAK: And again, I think that - - -

23 JUDGE RIVERA: Not assume because you ran you
24 must be an absconder.

25 MS. WALENDZIAK: And I don't think it's solely

1 again, on the flight alone. I think it is the flight in
2 conjunction with everything else in this record.

3 JUDGE RIVERA: Which is his location?

4 MS. WALENDZIAK: The location where he - - -

5 JUDGE RIVERA: Not the time, because it's not
6 really the time. What else?

7 MS. WALENDZIAK: Well, the time, I think they're

8 - - -

9 JUDGE RIVERA: The height and the weight?

10 MS. WALENDZIAK: The height and the weight is
11 rough - - -

12 JUDGE RIVERA: They couldn't see his race.

13 MS. WALENDZIAK: They couldn't see his race. But
14 again, I think the ski mask goes to - - -

15 JUDGE RIVERA: Suggest that perhaps he's trying
16 to hide?

17 MS. WALENDZIAK: Trying to obscure his identity.

18 CHIEF JUDGE WILSON: Well, the officer said the
19 opposite, right? The officer said it was not uncommon for
20 people to be walking around Rochester on cold days with ski
21 masks on.

22 MS. WALENDZIAK: Well, and I think - - - but
23 again, this is a reasonable mistake. They didn't have to
24 be absolutely certain because I think that while they - - -

25 CHIEF JUDGE WILSON: Well, I took the officer's

1 testimony to mean I didn't infer anything from that fact -
2 - -

3 MS. WALENDZIAK: I - - -

4 CHIEF JUDGE WILSON: - - - about identity.

5 MS. WALENDZIAK: Respectfully, I read the
6 testimony a little bit differently. But I mean, again,
7 that also could - - - it could weigh against that. But I
8 think it - - - it's a fact that can still add to the
9 analysis. And I would also note that this - - -

10 JUDGE RIVERA: So if I'm getting your rule, if
11 it's close enough and someone runs, even though the
12 officers didn't identify themselves, there's no suggestion
13 otherwise unless they identify themselves that they are
14 indeed connected in some way with law enforcement, if you
15 run, even though one is free to leave, that - - - that's
16 enough to be chased down and then arrested?

17 MS. WALENDZIAK: My rule to take from this would
18 - - -

19 JUDGE RIVERA: Yes.

20 MS. WALENDZIAK: - - - again be a fact specific
21 analysis of the flight under the circumstances presented,
22 because I think that if there were certain factors that are
23 present in this case that weren't present in others, I
24 don't think you could make the same inference from the
25 flight. I think the flight - - -

1 JUDGE RIVERA: Can you give an example of what
2 you would pull out that would make this different, and we
3 wouldn't be here?

4 MS. WALENDZIAK: I think if you pull out, say,
5 any of the other real, I guess, legs of this analysis. So
6 if they didn't have reason to believe that he was in this
7 particular area, if they had just gone to a completely
8 random street, say, Main Street in Rochester, New York.

9 JUDGE RIVERA: And just driving around?

10 MS. WALENDZIAK: Just driving around, have no
11 reason to believe that he might be there. I think that
12 this analysis would fall - - - a determination of a
13 reasonable mistake would fall apart in this case.

14 JUDGE RIVERA: What if she told them he's there
15 on Monday and they went on Tuesday?

16 MS. WALENDZIAK: Then, I think that that would
17 take away from the reliability of - - -

18 JUDGE RIVERA: What if she said he's there at 9
19 a.m., and they show up at 1 p.m.?

20 MS. WALENDZIAK: I don't - - - again, I think
21 that probably would take away from the reliability of what
22 she told them.

23 JUDGE RIVERA: What if she says it would be in
24 front of the building, and they see him across the street?

25 MS. WALENDZIAK: I don't know that that

1 necessarily would take away in that particular fact because
2 you could walk across the street. So I think that that
3 would still be close to that reasonable mistake.

4 JUDGE RIVERA: Rough enough. Okay.

5 MS. WALENDZIAK: Rough enough? And unless there
6 are any further questions from the court, I would ask you
7 to affirm the Appellate Division's decision. Thank you.

8 CHIEF JUDGE WILSON: Thank you.

9 MR. HOBBS: I want to begin by noting that issues
10 of pure identification happen in a lot of different
11 contexts where we apply De Bour. They arise where police
12 are relying on radio bulletins, they arise where police are
13 relying on fellow officer information, and they arise all
14 the time in warrantless investigations where you can have
15 absolute certainty that a crime occurred, but you have a
16 vague description of who the person is, or there's a bunch
17 of people in a crowd and you're trying to figure it out.
18 And we have applied De Bour in all kinds of contexts like
19 that consistently. And so applying it here promotes
20 consistency across all of our cases.

21 JUDGE GARCIA: Counsel, let me ask you a little
22 bit of the reverse that I think opposing counsel has asked,
23 why do you think De Bour here is more protective than Hill?
24 What do you get from De Bour?

25 MR. HOBBS: Well, De Bour, you get a - - -

1 decades of precedent developing what reasonable suspicion
2 means and what probable cause means. And I - - - I - - -

3 JUDGE GARCIA: And when does that come into the
4 De Bour analysis, that level of suspicion? When, what
5 stage?

6 MR. HOBBS: When they pursue him. It's got to be
7 a level three, right, and we can look at other cases about
8 level three and pursuit.

9 JUDGE GARCIA: Everything here to me seems to
10 focus on the pursuit.

11 MR. HOBBS: Um-hum.

12 JUDGE GARCIA: Right? Because under De Bour,
13 level two, you don't need those things to approach someone.
14 I know there's a dispute, so let's be hypothetical.

15 MR. HOBBS: Yes.

16 JUDGE GARCIA: I have a warrant, I think it's
17 you. I go up to you and I say, are you Joe Smith, right?
18 I can do that under De Bour. If I have a reasonable
19 founded suspicion that you're the person that has been
20 described, right? And then you run. Then, under De Bour,
21 I change gears and I need this heightened level of
22 suspicion, right?

23 MR. HOBBS: Um-hum.

24 JUDGE GARCIA: Okay. So that's what you claim is
25 missing in Hill?

1 MR. HOBBS: Correct. Right. We don't - - - in
2 Hill, it's going to be the same across every standard,
3 whether it's a pursuit or arrest or approach. You're
4 always going to ask, is this a reasonable mistaken belief,
5 all right.

6 JUDGE GARCIA: So in your view under Hill you
7 don't need the same justification to pursue? You don't
8 need reasonable suspicion to pursue under the federal law?

9 MR. HOBBS: It doesn't appear that way to me. It
10 appears to me - - - let me put it a slightly different way.
11 Maybe I'm - - - if you took this case the way the Appellate
12 Division analyzed it, and you take out the gun at the end,
13 they already had enough to arrest because they had a
14 reasonable, mistaken belief at that point, and they have a
15 warrant and that under Hill - - -

16 JUDGE GARCIA: I think that confuses things a bit
17 for me, at least in this case, because by the time they
18 catch him, they have probable cause to arrest him, whoever
19 he is - - -

20 MR. HOBBS: Right.

21 JUDGE GARCIA: - - - because they've seen a gun
22 in his hand, right?

23 MR. HOBBS: But - - - yeah.

24 JUDGE GARCIA: So - - - and it may be arguable if
25 they only had what they took at that point, you'd have this

1 type of Hill argument. But here you have this flight where
2 they develop probable cause for another crime. Right?
3 Because he has a gun and there's testimony, I saw a gun in
4 his hand. So I'm trying to understand what the difference
5 then would be between De Bour I'm running and Hill I'm
6 running.

7 MR. HOBBS: I mean, I haven't read enough Hill
8 cases to know that it's clear what Hill requires or what
9 the standard requires. We see it in a handful of Appellate
10 Division cases what the reasonable belief is, and it's
11 often applied at the arrest level. So I don't know what
12 kind of reasonable, mistaken belief you need to pursue
13 short of arrest. I know what - - - the Appellate Division
14 split over what it was here, and I think they don't have
15 enough guidance. I think in De Bour - - -

16 JUDGE SINGAS: Yeah, but the Appellate Division
17 in general adopt Hill since for like, the last forty years.
18 I don't think there's any appellate division that doesn't
19 in these mistaken ID cases. So there is a long standing
20 tradition.

21 MR. HOBBS: I mean, I've found somewhere between
22 half a dozen and a dozen cases in looking for them. I
23 don't, you know, it's not like a - - - the amount of De
24 Bour cases out there.

25 JUDGE SINGAS: Right, well, again - - -

1 MR. HOBBS: And I've found other cases where they
2 don't.

3 JUDGE SINGAS: - - - I'm not going to reiterate
4 my issues with De Bour identity. Thank you.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. HOBBS: Thank you.

7 (Court is adjourned)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

I, Christy Wright, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Jones (Joseph C.), No. 20 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: Christy Wright

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: February 16, 2026