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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 14

ZUBIDI (AMADO),

Appellant.

20 Eagle Street
Albany, New York
January 8, 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:

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1 CHIEF JUDGE WILSON: The last case under this
2 calendar is People v. Zubidi.

3 MS. ZOLOT: May it please the court, Barbara
4 Zolot for Appellant, Amado Zubidi. I'd like to request
5 three minutes' rebuttal time, please.

6 CHIEF JUDGE WILSON: Yes.

7 MS. ZOLOT: Your Honors, the police lacked
8 reasonable suspicion to stop Mr. Zubidi's minivan on May
9 18th, 2019, because they lacked a lawful basis for
10 concluding that the unknown driver of the van had committed
11 any - - -

12 JUDGE RIVERA: Well, how - - - how is the - - -
13 how are law enforcement supposed to proceed? Let's start
14 from the beginning. You have a witness who makes a
15 statement to the police, in fact, when the event is
16 occurring, that there is this white van, gives the license
17 plate number, it's been involved in a shooting, in this
18 road rage. Seems to me the police did exactly the
19 investigation you say they should do.

20 MS. ZOLOT: We disagree, Your Honor. I think
21 what we need to look at is what the officers actually knew
22 at the point when they made the stop, and if we catalog
23 those facts - - -

24 JUDGE TROUTMAN: So are you suggesting the only
25 way they could have stopped that vehicle is knowing that

1 the - - - that your client was the one who was driving on
2 each of the occasions?

3 MS. ZOLOT: That would, of course, be the best,
4 if they had actually seen who had gotten into the van and
5 could make some assessment that it matched the description
6 from the road rage, but no - - -

7 JUDGE RIVERA: Why can't the stop be part of an
8 investigation that starts with that first phone call?

9 MS. ZOLOT: Well - - -

10 JUDGE RIVERA: To me, you've compartment - - -
11 compartmentalized something. When you yourself are arguing
12 that the police should do appropriate investigations, it
13 strikes me that that is what the police did in this case.

14 MS. ZOLOT: Right. But the police - - - the - - -
15 - what the officers knew wasn't about the phone call. That
16 was the detective who had - - - you know, on the scene when
17 the - - - when - - -

18 JUDGE HALLIGAN: But he put that - - - he put
19 that in a BOLO, yeah, right?

20 MS. ZOLOT: What - - - right. Let's get back to
21 that. What the officers knew at the time that they made
22 the stop was that this van and - - - indisputably, this van
23 with the same license plate number had been involved in two
24 prior incidents, one the day before involving an
25 unidentified driver who tried to evade a summons - - -

1 JUDGE TROUTMAN: They were serious incidents,
2 both of them.

3 MS. ZOLOT: They were serious incidents, but - -
4 -

5 JUDGE TROUTMAN: And so were they supposed to
6 just ignore that because they - - -

7 MS. ZOLOT: Of - - -

8 JUDGE TROUTMAN: - - - couldn't tell who the
9 person was driving?

10 MS. ZOLOT: Of - - - of course not. The question
11 here is, collectively, what that information that they did
12 have told them. That information told - - -

13 JUDGE TROUTMAN: With respect to Judge Rivera,
14 she says investigation, so isn't stopping the vehicle part
15 of the investigation?

16 MS. ZOLOT: But this court has been absolutely
17 clear in cases *Hinshaw*, *Sobotker*, you know, repeatedly that
18 what the - - - a forceful stop of a car is a very
19 significant intrusion which can, at best, be unsettling and
20 frightening, and at worst, lead to very serious
21 consequences, and what - - -

22 JUDGE HALLIGAN: That doesn't answer the question
23 of - - -

24 MS. ZOLOT: No, I - - -

25 JUDGE HALLIGAN: - - - of whether there was

1 sufficient information.

2 MS. ZOLOT: Yes. What they had here told them -
3 - - this court's case law says that what the police need is
4 individualized suspicion that the driver or occupant of the
5 vehicle.

6 JUDGE HALLIGAN: But I thought you said, in
7 response to an earlier question, that they need not have
8 known for sure that he was the driver, so - - -

9 MS. ZOLOT: They could draw an inference. They
10 could draw a logical inference if the - - - if the - - -

11 JUDGE HALLIGAN: And from what to what?

12 JUDGE CANNATARO: From what?

13 MS. ZOLOT: Those circumstances weren't here. If
14 there was - - - if they had - - - when - - - at the time
15 they made the stop, it was in close temporal - - -

16 JUDGE SINGAS: Well, it was, wasn't it, from the
17 second incident? It was a block away - - -

18 MS. ZOLOT: It was not - - -

19 JUDGE SINGAS: - - - and it was a day later?

20 MS. ZOLOT: It was not because there was an
21 overnight period that separated May 17th from May the 18th.

22 JUDGE HALLIGAN: So - - - so it's stale automa -
23 - - I take - - - I take this to be, essentially - - - the
24 geographic and temporal proximity, essentially, stale on
25 this argument. Does that mean it's stale whenever it's

1 overnight? They were very clear the night before they were
2 going to keep an eye on the van. It was, you know, on
3 their minds. They see - - -

4 MS. ZOLOT: Yes.

5 JUDGE HALLIGAN: - - - him pull out the next
6 morning. Why is that stale?

7 MS. ZOLOT: We're - - - we're asking this court
8 to say that as a matter of law - - -

9 JUDGE HALLIGAN: Why?

10 MS. ZOLOT: - - - that there is an over - - -
11 because you can't presuppose continuity of driver. What -
12 - -

13 CHIEF JUDGE WILSON: I'm sorry. You didn't
14 finish your sentence. Presumes, as a matter of law, that
15 there's a - - -

16 MS. ZOLOT: Can't presuppose continuity of driver
17 where there is an overnight period.

18 CHIEF JUDGE WILSON: Okay. But they were
19 watching the van overnight. No?

20 MS. ZOLOT: They were - - -

21 CHIEF JUDGE WILSON: It hadn't - - -

22 MS. ZOLOT: - - - aware of the van.

23 CHIEF JUDGE WILSON: It hadn't - - - it hadn't
24 moved.

25 MS. ZOLOT: The van hadn't moved, but it was

1 still not - - -

2 CHIEF JUDGE WILSON: Well, then, why does it
3 matter whether it's overnight if it hadn't moved?

4 MS. ZOLOT: Well, because somebody could have
5 been in the - - - it's really about when the offense
6 occurred as compared to the stop be - - -

7 JUDGE SINGAS: So if it was eight hours later
8 during the day, it's different than if it's eight hours
9 overnight? Because - - -

10 MS. ZOLOT: Well, that could - - - that could
11 allow for an argument that it's too long, and it might not
12 be a - - - it might be a mixed question as to whether
13 that's too long, that overnight - - -

14 JUDGE SINGAS: Well, I'm trying to figure out if
15 - - - I'm trying to figure out what the - - - what the
16 overnight - - -

17 MS. ZOLOT: Yes.

18 JUDGE SINGAS: - - - the significance.

19 MS. ZOLOT: The - - -

20 JUDGE SINGAS: Is it the darkness?

21 MS. ZOLOT: The overnight rules out continuity of
22 driver.

23 JUDGE HALLIGAN: Why, though?

24 MS. ZOLOT: Because one - - -

25 JUDGE SINGAS: How, though, in this case when

1 they're watching it?

2 MS. ZOLOT: Yes, but one - - - but it's about
3 when the offense occurred, which was May 17th at about 7
4 a.m.

5 JUDGE HALLIGAN: Okay. But - - - but if it was
6 the same number of hours, whatever it is, twelve hours
7 during the day, would that also rule it out? Is it the
8 number of hours, or is there something about overnight?

9 MS. ZOLOT: Right. There's something about
10 overnight.

11 JUDGE HALLIGAN: And what is that?

12 MS. ZOLOT: Because the person who committed the
13 offense on May 17th has left the car. The car has been
14 parked, which means this - - -

15 JUDGE HALLIGAN: But that would be the case
16 during the daytime as well. I don't understand how
17 overnight matters.

18 MS. ZOLOT: Yes. What I'm saying is that - - -
19 or what I'm attempting to say is that a seven-hour period
20 may well be too long if it's during the course of a single
21 day, and courts could argue about that.

22 JUDGE TROUTMAN: So what's close enough?

23 MS. ZOLOT: Excuse me?

24 JUDGE TROUTMAN: What's a close enough period?
25 If you see the same vehicle, you have identifiable

1 information, and - - -

2 MS. ZOLOT: Well, the cases - - -

3 JUDGE TROUTMAN: What's close enough?

4 MS. ZOLOT: Yes. Well, we can only go by what
5 the cases suggest, what treatises suggest. So the case law
6 coalesces around an hour or so in Shabazz. It - - -

7 JUDGE TROUTMAN: So as long as this vehicle just
8 keeps roaming around, doing all manner of things and it
9 stays beyond an hour, the police can't do anything?

10 MS. ZOLOT: I - - - we aren't suggesting that if
11 it's beyond an hour, as a matter of law, the police can't
12 do anything. What we - - - what we're saying is that under
13 the - - - on the record here where you have the three weeks
14 from April 28th, and I don't think anyone disputes that
15 that exceeds the bounds of a logical inference, and you
16 have an overnight period where, once again, it was a Friday
17 to a Saturday, the person who evaded the - - -

18 JUDGE RIVERA: So your presumption is - - -

19 MS. ZOLOT: Yes.

20 JUDGE RIVERA: - - - that when someone leaves a
21 vehicle after a certain period of time, whoever returns to
22 that vehicle, we must presume it is not the same person?

23 MS. ZOLOT: It's not that we must presume it's
24 not the same person. It's that there aren't specific
25 circum - - - specific enough circumstances allowing the

1 police to infer that it is the same person.

2 JUDGE RIVERA: Well, that sounds like a
3 presumption - - -

4 CHIEF JUDGE WILSON: But we have - - -

5 JUDGE RIVERA: - - - that has to be overcome.

6 MS. ZOLOT: Yes, with specific fact - - -

7 JUDGE RIVERA: Right? So your presumption is - -
8 - your rule is the presumption is it's never the same
9 person?

10 MS. ZOLOT: I - - - I - - - we are not - - - the
11 rule we would propose is that where - - - all the police
12 know is that the same car has been involved in prior
13 wrongdoing - - -

14 JUDGE RIVERA: Yes.

15 MS. ZOLOT: - - - then it's insufficient to - - -
16 there was reason - - - the reasonable suspicion is
17 insufficient as a matter of law unless there is close
18 temporal - - -

19 CHIEF JUDGE WILSON: Well, I think they know that
20 - - - I think they know that the owner was the person
21 involved in the first wrongdoing.

22 MS. ZOLOT: Yes. That gets to - - -

23 CHIEF JUDGE WILSON: They know that.

24 MS. ZOLOT: Yes. And - - -

25 CHIEF JUDGE WILSON: And they know that the owner

1 lives near where the car is parked.

2 JUDGE TROUTMAN: Right.

3 MS. ZOLOT: Well, that gets us in - - -

4 JUDGE RIVERA: They know the owner's name.

5 MS. ZOLOT: And they know the owner's name, but
6 none of that really - - -

7 CHIEF JUDGE WILSON: And they know the owner - -
8 - well, they have no reason to believe the owner lied to
9 them when he said he heard a - - - a bang - - -

10 MS. ZOLOT: They - - -

11 CHIEF JUDGE WILSON: - - - and they have a - - -

12 MS. ZOLOT: They didn't know that information.

13 CHIEF JUDGE WILSON: No?

14 MS. ZOLOT: No, they did not - - - that
15 information was purely in the possession of Det. Thomas,
16 the detective who investigated the road rage incident.
17 What the officers knew was that the van - - - the officers
18 who made the stop was that the van had been involved in
19 these two separate incidents, that the minivan was
20 registered to Mr. Zubidi, was parked near his house on May
21 18th, and significantly, what they didn't know was who got
22 into that van on May 18th.

23 JUDGE HALLIGAN: They also know about the
24 incident on the 17th - - -

25 MS. ZOLOT: Yes. The two - - -

1 JUDGE HALLIGAN: - - - when they had talked to
2 the traffic agent who - - -

3 MS. ZOLOT: Yes.

4 JUDGE HALLIGAN: - - - indicated that he drove
5 off quickly enough that he almost hit him and appeared to
6 be evading, you know, getting - - - getting a ticket for
7 the infraction.

8 MS. ZOLOT: But - - - yes, they knew the van had
9 done that, but that - - - the - - - that driver was
10 unidentified. The ticket agent hadn't - - -

11 JUDGE RIVERA: And that's what I'm saying. Your
12 rule is the presumption is it's not necessarily - - - or
13 it's not the same person.

14 MS. ZOLOT: That's - - -

15 JUDGE RIVERA: It might be a rebuttable
16 presumption - - -

17 MS. ZOLOT: Yes.

18 JUDGE RIVERA: - - - but that's your presumption
19 - - -

20 MS. ZOLOT: That is not - - -

21 JUDGE RIVERA: - - - and I don't see that that's
22 a natural presumption.

23 MS. ZOLOT: I - - - I - - - I would frame our - -
24 - our rule differently, and I think there is a distinction
25 because we're not denying that an inference that it is the

1 same driver can't be drawn. It can if there are specific
2 circumstances.

3 CHIEF JUDGE WILSON: What are - - - what are
4 those - - -

5 JUDGE HALLIGAN: But what kinds of circumstances?

6 MS. ZOLOT: Yes. When there is sufficiently
7 close temporal and geographic proximity.

8 JUDGE SINGAS: Okay. How much closer - - -

9 JUDGE HALLIGAN: So ten minutes - - -

10 MS. ZOLOT: We're saying overnight is not
11 sufficiently close.

12 JUDGE SINGAS: Okay. How about geographic? How
13 much closer? Half a block? Is that - - - would that
14 suffice?

15 MS. ZOLOT: Well, it has to be temporal - - -
16 this was geographic proximity. We're not disputing that.

17 JUDGE SINGAS: Okay.

18 MS. ZOLOT: But it was not temporally close
19 enough because the - - - it - - - it's the short span of
20 time that allows for the inference of continuity - - - the
21 logical inference of continuity of driver. When you have a
22 short span of time, just simple physics would allow the
23 officers to infer that, yes, we have sufficient confidence
24 that the same driver is driving. Once - - -

25 JUDGE CANNATARO: What's the - - - what's the

1 problem with the logic that if it's a privately owned
2 vehicle, that the person who typically drives it is the
3 owner of the vehicle?

4 MS. ZOLOT: That is an assumption based on
5 generalities rather than specific facts - - -

6 JUDGE CANNATARO: I thought - - -

7 MS. ZOLOT: - - - and in New York, in particular,
8 that's - - - we would take issue with that premise that
9 it's the same driver who's typically driving it. In New
10 York, there's - - - New York City - - -

11 JUDGE TROUTMAN: Well, what do you say with
12 respect to Justice Kagan - - - she says, when you see a car
13 coming down the street, your common sense tells you that
14 the registered owner may well be behind the wheel. Not
15 always, of course. Families share cars, friends borrow
16 them. Still, a person often buys a vehicle to drive it
17 himself, so your suspicion that the owner is driving would
18 be perfectly reasonable.

19 MS. ZOLOT: Yeah.

20 JUDGE TROUTMAN: And that's in Kansas v. Glover.

21 MS. ZOLOT: Of course.

22 JUDGE CANNATARO: And I will point out she's from
23 New York City.

24 MS. ZOLOT: But she's sitting on a federal court
25 interpreting the Fourth Amendment as opposed to our state

1 constitution, and - - -

2 JUDGE RIVERA: But it doesn't seem this
3 presumption is irrational whereas your presumption, seems
4 to me, not a natural presumption.

5 MS. ZOLOT: Our presumption or inference - - - if
6 I can just step back to address Judge Troutman, you bring
7 up Kansas v. Glover. Kansas v. Glover was very explicitly
8 concern - - - very explicitly grounded the inference - - -
9 the owner/driver inference on common sense. That is not a
10 basis on which this court has been comfortable - - -

11 JUDGE HALLIGAN: I'm not sure how that specific
12 presumption is implicated here because - - -

13 JUDGE CANNATARO: Right.

14 JUDGE HALLIGAN: - - - in Kansas v. Glover, as I
15 understand it, the issue was, I think, suspension of a
16 license. So - - - so the fact that you knew who the owner
17 was was - - - and that it was the owner qua owner was
18 essential, I think, to - - - to deciding there was
19 reasonable suspicion. Here, it seems to me, there's a
20 different presumption, which is same driver, not
21 owner/driver.

22 MS. ZOLOT: Yes, I - - - I would agree that - - -

23 JUDGE HALLIGAN: And that - - - that is - - - is
24 distinct and, perhaps, a - - - a more ready inference that
25 one could draw than the owner/driver inference.

1 MS. ZOLOT: Just to unpack a couple of points
2 Your Honor made, the - - - it's the Appellate Division
3 majority who took Glover and ran with it and applied it
4 more broadly, but - - -

5 JUDGE HALLIGAN: Okay. But - - - but - - - but
6 that - - - that was not at play, I don't think, in the
7 trial court, and the reference - - - we could debate
8 whether or not the citation, Kansas v. Glover, puts it in
9 play. But in any event, do you - - - do you think that
10 it's an owner/driver inference or a same driver inference?

11 MS. ZOLOT: We are focusing on the same driver
12 inference, which is more clearly baked into the suppression
13 court's ruling below and which might - - -

14 JUDGE TROUTMAN: How is it impacted in New York?
15 New York does require that you register your car, right?

16 MS. ZOLOT: Yes.

17 JUDGE TROUTMAN: And who gets to register the
18 car? The owner, right?

19 MS. ZOLOT: I don't own a car, but I think that,
20 yes, it is the owner who - - -

21 JUDGE TROUTMAN: As an upstater, I do, and I can
22 tell you not everybody can register the vehicle - - -

23 MS. ZOLOT: Yes.

24 JUDGE TROUTMAN: - - - or insure it, and - - -
25 and there are requirements. And you register it so - - -

1 because cars can cause harm, correct, themselves. Not even
2 something suggested here. So you can trace it back. So
3 doesn't that play into the investigation and reasonable
4 inferences?

5 MS. ZOLOT: I - - - I would go back to - - - this
6 court has been so clear that a forcible stop of a car
7 requires reasonable suspicion, and that, in turn - - -

8 JUDGE TROUTMAN: So it's not reasonable that you
9 - - - this car - - - same car has been involved. It's been
10 spotted in a location that's close to where the registered
11 own - - - you can't - - - that information cannot be
12 sufficient ever? Is that what you're saying?

13 MS. ZOLOT: It's not sufficient where all the
14 police have, even if it sounds like a lot, is reasonable
15 suspicion that the car was involved in the wrongdoing.

16 JUDGE TROUTMAN: So again, you're suggesting the
17 only way they can pull that car over is to know for a fact
18 who was the one operating in - - - in each instance.

19 MS. ZOLOT: No. Or - - - no, Your Honor. Or if
20 there are specific circumstances, such as sufficient
21 temporal and geographic proximity. Now, we've been
22 debating what that is, but it's not an overnight - - -

23 JUDGE RIVERA: So could - - - so could - - - so
24 could - - - since you say there's reasonable suspicion
25 regarding the car - - - the vehicle itself - - -

1 MS. ZOLOT: So to speak.

2 JUDGE RIVERA: - - - do they stop it to impound
3 it even if they don't make an inquiry of the individual or,
4 otherwise, arrest them or do something else?

5 MS. ZOLOT: Well, they would have - - - if
6 there's something about the car - - - for example, in
7 Bushey, the - - - the driver's identity was irrelevant
8 because what we were talking about - - - what the court was
9 talking about there was a suspended registration. So in a
10 situation like that, if the - - -

11 JUDGE RIVERA: Let's talk about the detective and
12 what they had. Could the detective have - - - have, then,
13 sought to impound that minivan based on the witness'
14 information regarding the road rage and the use of the
15 firearm and the - - - giving the license plate number and
16 the description?

17 MS. ZOLOT: I mean, I don't know what's required
18 to impound, but if that gave them independent - - -

19 JUDGE RIVERA: Well, I'm asking you what the rule
20 should be.

21 MS. ZOLOT: Right. Well, if they could do
22 something to the car where the driver's identity was
23 irrelevant, then yes, they could stop the car, but once the
24 - - -

25 JUDGE RIVERA: It's - - - it's a vehicle that's

1 involved in the use of a firearm and an incident on road
2 rage.

3 MS. ZOLOT: Yes. If that allowed the officers to
4 - - -

5 JUDGE RIVERA: Yeah.

6 MS. ZOLOT: - - - impound a vehicle, then the
7 driver's identity would be irrelevant. And even if a
8 completely innocent person, the spouse, the child, the
9 partner, the neighbor were driving the car, the police
10 would have - - -

11 JUDGE RIVERA: So it's - - - it - - - so then
12 it's not the stop. The issue is what they can do with the
13 person behind the wheel.

14 MS. ZOLOT: The issue is what they are going to
15 do with the person behind the wheel, but whether they have
16 an inference to - - - that allows them to do something to
17 that person behind the wheel. There - - - in - - - our
18 concern is not just with an erosion of individualized
19 suspicion. If you just let the same driver as before apply
20 no matter - - -

21 JUDGE TROUTMAN: So you can stop the car - - - so
22 are you saying you can stop the car, you just can't take
23 the person?

24 MS. ZOLOT: No - - - no - - - no, Your Honor. I
25 was responding to when can they stop the car. And if the

1 driver's identity is irrelevant because they have an
2 independent basis to stop it and impound it based on the
3 prior information, that's different then - - -

4 JUDGE TROUTMAN: So isn't it an independent basis
5 that this car may have tried to run down a ticket agent?
6 The car.

7 MS. ZOLOT: No, Your Honor, because, once again,
8 there has to be individualized suspicion of criminality for
9 there to be reasonable suspicion.

10 JUDGE TROUTMAN: But there was - - - so you're
11 saying the fact that this plate, the, say, vehicle, make,
12 model, proximity of where it - - - the vicinity it was
13 seen, without knowing the specific identity of who was
14 actually driving it, they cannot stop it?

15 MS. ZOLOT: They - - - once again, they can draw
16 inferences if there are - - - if there's geographic and
17 temporal proximity or they have other reasons to know, but
18 no, they cannot - - -

19 JUDGE TROUTMAN: But no, what I just said, you
20 say they cannot stop it.

21 MS. ZOLOT: - - - they cannot stop - - - they
22 have to use other law enforcement tools - - -

23 CHIEF JUDGE WILSON: So - - - so let me - - -

24 MS. ZOLOT: - - - and here, there - - - there
25 were some - - -

1 CHIEF JUDGE WILSON: So let me try a
2 hypothetical.

3 MS. ZOLOT: Yes.

4 CHIEF JUDGE WILSON: A white minivan. They got
5 the plates involved in the drive-by shooting. Nobody sees
6 what the driver looks like. Same thing happens the next
7 day. Same thing happens the next day. Same thing happens
8 the next day. Same thing happens the next day. Then a
9 couple days go by, and they spot the car, but they don't
10 know who was driving any of those days, and the car is
11 moving. Can they stop it?

12 MS. ZOLOT: They - - - they would, then, have a
13 basis for inferring that's much stronger than here. It
14 would - - -

15 CHIEF JUDGE WILSON: Well, there's no geographic
16 proximity and there's no temporal proximity.

17 MS. ZOLOT: Our answer to that would be that
18 would not be a question of law in this court because the
19 parties could certainly debate whether it was reasonable on
20 those facts.

21 JUDGE HALLIGAN: But why? If there's - - - there
22 was a - - - under the Chief's hypothetical, there's an
23 overnight, which is the same thing that we have here. He
24 said, there's no geographic proximity. Here, we have it.
25 Why would the answer be any different?

1 MS. ZOLOT: Well, because as you build out - - -

2 JUDGE CANNATARO: Is it because there are
3 multiple incidents?

4 MS. ZOLOT: Because it's - - - in a sense. As
5 you build out more facts that allow for a logical
6 inference, that may be the same - - -

7 CHIEF JUDGE WILSON: I know nothing about the
8 driver. I know nothing about the driver.

9 MS. ZOLOT: And - - -

10 CHIEF JUDGE WILSON: Don't know what the driver
11 looks like.

12 MS. ZOLOT: Yes, but it's some - - -

13 JUDGE RIVERA: What - - - what's the inference?
14 Because it's multiple times, it must be the same person?

15 MS. ZOLOT: Well, once you start having a pattern
16 - - -

17 JUDGE RIVERA: Yeah.

18 MS. ZOLOT: - - - where - - - of similar conduct
19 over and over again - - -

20 JUDGE TROUTMAN: So do you have to wait for
21 multiple deaths to have occurred?

22 MS. ZOLOT: Well, Your Honor, we're - - - we're
23 not - - -

24 JUDGE TROUTMAN: But - - - but that is - - - I
25 would respectfully suggest that that's what you're saying

1 here. The continuum has to keep going until you deem it
2 sufficient.

3 MS. ZOLOT: But if the question is can they stop
4 the car or must they do - - - are there other available
5 means for the police to get the information that should be
6 required - - -

7 JUDGE TROUTMAN: So stopping the car isn't a part
8 of an investigation as a reasonable means - - -

9 MS. ZOLOT: On - - - on this record, no. On - -
10 -

11 JUDGE GARCIA: Does it make a difference that - -
12 - I think - - - in the Chief's hypothetical and, I think,
13 here, the car is actually involved in a crime, right? So
14 you know, it's been used in a drive-by shooting, it's in
15 the road rage incident, it's - - - almost runs over a
16 traffic officer, and a difference between a case where you
17 have a suspected drug dealer and then you think that drug
18 dealer just is driving around in a certain car, and then
19 you see that car, and you pull that car over.

20 MS. ZOLOT: Your Honor, we would disagree that
21 that - - - that that situation - - - yes - - - no, you
22 can't pull the car over. Our situation, you can. The
23 question is always is there reasonable suspicion to believe
24 the driver occupants are suspected of the criminality, be
25 it the - - - the drug dealing or the road rage.

1 JUDGE GARCIA: That isn't really the - - - my
2 question would be, does the fact that that particular thing
3 was actually used in the crime give you some added ability
4 or reasonableness to say, yes, the person who's driving it
5 may have been the one that did it as opposed to I know this
6 person carries a lot of drugs, and I - - - I think that's
7 his car?

8 MS. ZOLOT: No, Your Honor, we would disagree,
9 that that gives more aware - - -

10 JUDGE CANNATARO: Well, then, I think that you
11 have to answer the Chief's question in the negative. If
12 all you know is that there's a vehicle doing something over
13 and over and over, you still don't know anything about the
14 driver.

15 MS. ZOLOT: You are - - - once you have more and
16 more circumstances - - - we're just - - -

17 JUDGE HALLIGAN: Well, here, we have two.

18 MS. ZOLOT: - - - we want the inference to be
19 reasonable. How many - - -

20 JUDGE HALLIGAN: Here, we - - - we have two
21 circumstances, right?

22 MS. ZOLOT: Right.

23 JUDGE HALLIGAN: And so if there are two drive-by
24 shootings, you can't stop the car, but if there are three
25 or four - - - just trying to explore the parameters of your

1 rule.

2 MS. ZOLOT: I - - - yes, I understand. And I do
3 think that as you build out - - -

4 JUDGE HALLIGAN: Okay. So for - - -

5 MS. ZOLOT: - - - more and more specific
6 circumstances, it'll - - -

7 JUDGE HALLIGAN: - - - for two - - - two
8 shootings, not enough?

9 MS. ZOLOT: Well, if - - - if we're - - - I'd
10 like to distinguish between what would be a, you know,
11 question of law for this court where, no, you can't draw -
12 - -

13 JUDGE HALLIGAN: How would the answer be any
14 different based on the nature of the crime in terms of the
15 quantum of reasonable - - -

16 MS. ZOLOT: Yes.

17 JUDGE HALLIGAN: - - - suspicion?

18 MS. ZOLOT: Well, stepping back, because here, we
19 don't have anything other than the fact of the van's
20 involvement in two prior incidents.

21 JUDGE SINGAS: I know, but you're forestalling
22 the possibility to find any more evidence. You're talking
23 about doing an investigation, but the most commonsensical
24 approach, if you would just ask anyone, would be, well,
25 let's stop that car and talk to the person and see if,

1 somehow, it will lead to more evidence. Like, what else do
2 you think they could have done? Like - - -

3 MS. ZOLOT: Well, here, in fact, they could have
4 approached Mr. Zubidi before he got into the car. They
5 were staking it out. They chose not to. They could have
6 under - - -

7 JUDGE RIVERA: That's less intrusive, to be
8 surrounded by a bunch of cops on the street?

9 MS. ZOLOT: It is a - - - a stop - - - a stop on
10 the street is less intrusive than a forcible stop of a
11 moving car.

12 JUDGE SINGAS: Okay. But in - - - but in the
13 drive-by shooting, even if it was one, then we have no idea
14 who the driver is, and you see that car, we're really going
15 to tell police officers, don't stop the exact car that just
16 was involved in a gang - - -

17 MS. ZOLOT: Well - - -

18 JUDGE SINGAS: - - - shootout last night?

19 MS. ZOLOT: - - - Your Honor, just as you said,
20 that was just involved. It's, again, that temporal and
21 spatial - - -

22 JUDGE SINGAS: Last night. Last night.

23 MS. ZOLOT: The police could not stop that car
24 unless they had a reason to believe that the driver was - -
25 - a reason to believe that the driver was involved.

1 JUDGE RIVERA: So how should they have proceeded?
2 Because I understood you, in the briefing, to say there are
3 other ways to protect public safety, that there would be
4 other ways to pursue an appropriate investigation. What -
5 - - what would it be?

6 MS. ZOLOT: Well, in this case, for example, they
7 could have stopped Mr. Zubidi before he got into the car.
8 They could have driven - - - this was 6 a.m. in the
9 morning.

10 JUDGE RIVERA: And asked him a bunch of - - -

11 MS. ZOLOT: They could have tried to ascertain
12 who was driving.

13 JUDGE RIVERA: - - - and asked him a bunch of
14 questions?

15 MS. ZOLOT: Excuse me?

16 JUDGE RIVERA: When - - - and when they stopped
17 him, asked him a bunch of questions?

18 MS. ZOLOT: Yes, they could - - -

19 JUDGE RIVERA: What's the basis for stopping him
20 on the street?

21 MS. ZOLOT: Well, they certainly had a common law
22 right to inquire based on what they had.

23 JUDGE RIVERA: And he doesn't want to talk to
24 them, and he says, no, thank you, and he goes right into
25 his car.

1 MS. ZOLOT: Yes.

2 JUDGE RIVERA: Now what?

3 MS. ZOLOT: They could survey the car and - - -

4 JUDGE RIVERA: Follow him around?

5 MS. ZOLOT: Well, if they stopped Mr. Zubidi on
6 the street and identified that he was an Hispanic male,
7 then, of course, that would elevate their level of
8 suspicion. They would now have - - -

9 JUDGE RIVERA: Sounds like racial profiling, but
10 okay. Moving along, they follow the car. Do they have to
11 wait - - - I would think you would say, well, they'd have
12 to hear from the detective that this was the car involved
13 in that drive-by shooting, and maybe they would take some
14 other path to investigate. I mean, just answer - - - once
15 you know that this is an instrumentality in - - - in a
16 criminal act, I don't - - - I'm finding it very difficult
17 to understand why you think they can't stop the car.

18 MS. ZOLOT: Well, we're just basing it on what
19 this court has said is required for the forcible stop of a
20 car, which is individualized suspicion that the driver or
21 occupants have been involved in some criminality, and here,
22 the officers did not have enough to draw an inference that
23 the driver of the car was that person. It could very well
24 have been this was a family minivan. I mean, this was a
25 car that's recognized as familial.

1 JUDGE RIVERA: Again, your presumption is the
2 driver is not the same person.

3 MS. ZOLOT: If - - - yes, Your Honor.

4 JUDGE RIVERA: Okay. Got it.

5 CHIEF JUDGE WILSON: Thank you.

6 MS. ZOLOT: Thank you.

7 MR. GUENTHNER: Good afternoon. May it please
8 the court, Franklin Guenthner for the People.

9 JUDGE SINGAS: Why isn't this just a Glover
10 situation? What else?

11 MR. GUENTHNER: Well, I think - - - I think - - -
12 to Judge Halligan's point, I think the situation in Glover
13 was slightly different because the actual inference that
14 the officers were drawing in that case had to do with the
15 fact that the defendant actually owned the car. Here, I
16 think - - -

17 JUDGE HALLIGAN: And was only committing a crime
18 if - - - if he was - - -

19 MR. GUENTHNER: If he was the one behind the
20 wheel.

21 JUDGE HALLIGAN: Yeah.

22 MR. GUENTHNER: Correct, because it was for a
23 suspended license. Here, I don't think there's any
24 indication that the officers were pulling over the van
25 because they suspected that the person behind the wheel was

1 its owner. They pulled the van over because they suspected
2 that the driver may have been the same person from either
3 the day before and/or the - - - the first instance.

4 JUDGE CANNATARO: Why? What's the reasonable
5 basis for that suspicion?

6 MR. GUENTHNER: Well, I think the - - - the
7 starting point is clearly that it is the same car. That is
8 undisputed that in all three incidents, it's the same car.

9 JUDGE CANNATARO: It's familial. I'm - - - I'm
10 told members of the family drive it, maybe even friends
11 drive it. You know, it's - - - a lot of people drive it.

12 MR. GUENTHNER: Well, it - - - it is a - - - it
13 is still a private vehicle, and I think that the fact that
14 the officers found it the night before or early morning
15 hours of the day that they pulled it over and looked inside
16 and saw that it was a private vehicle. They also - - -
17 when they ran the BOLO report, they saw - - - BOLO report,
18 they saw that it was registered to a single person at a - -
19 - at a private address.

20 JUDGE CANNATARO: I mean, private versus
21 commercial, I guess, tells you that not everybody who works
22 for a business is going to have access to that car, but
23 even privately owned, if we're talking about a family, and
24 it could be a family of substantial size, could have a
25 number of drivers.

1 MR. GUENTHNER: I think if you are starting from
2 the place where it is the exact same car, though, you
3 already narrowed the universe down to a very small number
4 of people.

5 CHIEF JUDGE WILSON: Well, what if - - - what if
6 the plate comes back as a rental car?

7 MR. GUENTHNER: Then that might weigh against
8 that being a reason - - - well - - - so if it's a rental
9 car, yeah, I think that would weigh differently.

10 JUDGE CANNATARO: That's a big problem. I mean,
11 you - - - you would have to - - - if it was a rental car,
12 the fact that it was involved - - - that it was known to be
13 involved in a crime would not, in any way, justify stopping
14 a particular person who's driving it, would it?

15 MR. GUENTHNER: I think it - - - well, it would,
16 then, go to how recent was the - - - the incident from the
17 day before.

18 JUDGE CANNATARO: Yeah, maybe if it was the same
19 day or something - - -

20 MR. GUENTHNER: Sure.

21 JUDGE CANNATARO: - - - like that, but even your
22 adversary says that kind of temporal proximity, assuming
23 there's spatial proximity as well, is good enough. So
24 we're - - - we're exploring the outer bounds, not the inner
25 bounds.

1 MR. GUENTHNER: Sure. And - - - and I - - - and
2 I think all of these are - - - are - - - are valid
3 questions, but they really go to why this is a mixed
4 question because these are all inferences that can be
5 connected to each other based on the specific facts of a
6 particular case.

7 JUDGE HALLIGAN: Can I ask - - - can I ask a
8 specific question about the record? So I think Ofc. Ameral
9 testifies that the information that he had in making the
10 stop was that the individual was armed and dangerous,
11 right?

12 MR. GUENTHNER: So - - -

13 JUDGE HALLIGAN: And if I can, I believe the
14 BOLO, though, only references the vehicle and the license
15 plate. So does the record tell us how he knows that?

16 MR. GUENTHNER: The BOLO - - - the BOLO report
17 indicates that the van - - - and this is - - - I'm quoting
18 from his testimony. We don't have the actual printout in
19 the record, but - - -

20 JUDGE HALLIGAN: I didn't see it.

21 MR. GUENTHNER: - - - his testimony at the
22 hearing is that the van itself is wanted in connection to a
23 road rage - - - road rage shooting in the confines of the
24 precinct and that the Hispanic male who was driving the van
25 should be considered armed and dangerous.

1 JUDGE HALLIGAN: Right. But do we know how he
2 knows that he's considered armed and dangerous? Maybe
3 we're just inferring it from the fact that - - - that it
4 was a shooting, but I thought he testified that all he had
5 learned before they saw and ran the plate was the BOLO; is
6 that right?

7 MR. GUENTHNER: Before they ran the plate. So -
8 - - well, he - - - he certainly learns about the second
9 incident - - -

10 JUDGE HALLIGAN: Sorry. After - - - yeah, go
11 ahead.

12 MR. GUENTHNER: The BOLO - - - the BOLO report
13 tells him about the first incident - - -

14 JUDGE HALLIGAN: Yes.

15 MR. GUENTHNER: - - - and that it's tied to that
16 vehicle and that it involved an Hispanic male who is armed
17 and dangerous. If that - - - the BOLO report doesn't
18 necessarily indicate that it's this defendant or that it's
19 the same person at the - - -

20 JUDGE HALLIGAN: But I thought that Det. Thomas
21 said that the only thing he put in the BOLO was the plate
22 and the vehicle number? I mean, the - - - the plate and
23 the description of the vehicle.

24 MR. GUENTHNER: Well, I think he would have had
25 to attach some kind of - - - I mean, the reason you create

1 a BOLO report is - - -

2 JUDGE HALLIGAN: Right.

3 MR. GUENTHNER: - - - because it's connected to a
4 - - - a criminal incident, and so I think the inference is
5 that - - -

6 JUDGE CANNATARO: You can't put out a BOLO for a
7 vehicle?

8 MR. GUENTHNER: Well, I think the - - - his
9 testimony is that the reason that they put out the BOLO is
10 because there is some - - - because they're - - - they're
11 on the - - - on the lookout. There's a safety concern.

12 JUDGE CANNATARO: No, but that's not my question
13 because I - - - my recollection is somewhat similar to
14 Judge Halligan's. I didn't think the BOLO contained any
15 description of a suspect. I thought it was just about a
16 vehicle. So if you're saying that can't happen, that's an
17 important point.

18 MR. GUENTHNER: Well, so the - - - the testimony
19 - - - the detective - - - excuse me. Let me back up. The
20 - - - the BOLO report discussed the van, and the officer's
21 testimony is that it's connected to this shooting. That's
22 - - - that's the testimony of the officer. Det. Thomas did
23 have a description of the shooter based on his interview
24 with the suspect. That doesn't make it into the BOLO.

25 What the officers do learn is that the van is

1 connected to a specific person at a private residence, and
2 the testimony is that it's wanted in a shooting, and - - -
3 and so the officers then make the connection between the
4 two that, well, because of what happens the second day,
5 this person appears to have been running from the traffic
6 agent perhaps because they are the same person involved.

7 And so making the connection between the two is
8 what - - - is what gives the reasonable suspicion to pull
9 it over the following day. And I think, again, you look at
10 the fact that it's a privately owned vehicle. There's no
11 dispute that it's the same car in all three incidents.
12 It's close by to where the second incident occurs. It - -
13 - it's - - - it's relatively recent. It's less than
14 twenty-four hours later.

15 JUDGE CANNATARO: I don't - - - I don't have the
16 record page, but what Thomas says with respect to the BOLO
17 is that he - - - he put out the BOLO in regards to the
18 vehicle because he, quote, believed the vehicle was
19 involved in a dispute with a firearm, and I wanted any
20 officers that came in contact with the vehicle to be aware.
21 Nothing about the driver.

22 MR. GUENTHNER: Well, there's no - - - yeah,
23 there's no description of the - - - I mean, Det. Thomas
24 knows - - - has a description from the witness. That make
25 - - - that does not make it into the BOLO report. And the

1 officers who, then, look up the BOLO report still know that
2 the car is an instrumentality of - - - of this previous
3 shooting, and then they make the connection to the previous
4 - - - to the incident the day before, which we would argue
5 is actually sufficient by itself for the officers to make a
6 stop because of where it is found.

7 JUDGE HALLIGAN: How do we factor in the first
8 incident? That was a couple weeks prior, right? And - - -

9 MR. GUENTHNER: Yeah.

10 JUDGE HALLIGAN: - - - and so there's, certainly,
11 a temporal proximity question there, right? What do we do
12 about that?

13 MR. GUENTHNER: Well, I think the testimony from
14 the officers, again, is that the first incident informs
15 what happens in the second incident. I don't think that
16 the officers - - -

17 JUDGE HALLIGAN: Why is there not - - - if it had
18 been a year previously - - - I mean, how are you wrestling
19 with the temporal proximity constraint for the earlier
20 incident?

21 MR. GUENTHNER: Well, and - - - and I think this
22 gets back to why this is a mixed question. The Appellate
23 Division didn't draw any sharp lines about three weeks per
24 se being too - - - too far back. I think because it's the
25 same car and because it's in - - - it's in Manhattan, where

1 this happens, and it's three weeks, I think that would have
2 been sufficient based on everything else that the officers
3 find out when they are investigating the van.

4 But you know, we're not asking this court to say,
5 well, three weeks is, you know, as a matter of law,
6 sufficient, but after that, it depends on how far away it
7 is. We're saying that this all goes into the mix.

8 JUDGE GARCIA: Can you - - - would you care to -
9 - -

10 JUDGE RIVERA: But what's the rule? Just be a
11 little bit clearer. What is the rule?

12 MR. GUENTHNER: The rule is the same as it's
13 always been, which is just that reasonable suspicion is
14 based on specific and articulable facts and the logical
15 inferences that you draw from - - - from those facts, and
16 so there's no presumption that you need - - -

17 JUDGE RIVERA: Facts related to the vehicle as
18 opposed to who might be the driver?

19 MR. GUENTHNER: Well, I think the specific facts
20 about that - - - the vehicle go to the person who is
21 involved in the crime. It's no different than saying,
22 well, we have a suspect who's wearing a specific red hat in
23 all three incidents, and therefore, we can sort of draw - -
24 -

25 JUDGE RIVERA: Yes, but how do they know it's the

1 defendant at the second and third incident?

2 MR. GUENTHNER: Well, I don't think they - - -

3 JUDGE RIVERA: If you're saying it's connected to
4 the first.

5 MR. GUENTHNER: I think they're - - - I think
6 they're connecting all of them, and I think it would have
7 been enough for the second incident to occur, based on
8 where and when it happened, for them to stop the car.

9 But we're not saying that the officers have to
10 make an automatic presumption and then - - - only if
11 there's negative inferences that sort of get in the way of
12 that, then - - - then that's the only way they don't have
13 reasonable suspicion, and I think, in this case, what it
14 shows is that all of the information they had allowed them
15 to sort of draw those connections.

16 JUDGE RIVERA: Did they stop the car for purposes
17 of impounding it?

18 MR. GUENTHNER: You're talking about Det. Thomas
19 or - - - or the officers at the - - -

20 JUDGE RIVERA: Once they identify that this is
21 the car, based on the BOLO, that - - - that was involved in
22 the - - - in the road rage incident.

23 MR. GUENTHNER: I don't know enough about
24 impounding vehicles specifically. I mean, what the
25 officers say the night before when they find it is that,

1 you know, they didn't see anything criminal about what was
2 inside, and they didn't feel that they could act at that
3 point. I think they were waiting for someone to get in
4 because they reasonably suspected that - - -

5 JUDGE RIVERA: Yes.

6 MR. GUENTHNER: - - - the person who is operating
7 this is the person who's conducted - - -

8 JUDGE RIVERA: Yes.

9 MR. GUENTHNER: - - - conducted these crimes on -
10 - - on previous occasions.

11 JUDGE CANNATARO: Counsel, I'd like to know why
12 it seemed - - - or from my point of view, it seems
13 important to police to stop the defendant while he's
14 driving. You know, they knew that the vehicle was involved
15 in the car. They have the plate. They knew the
16 registration. They knew where the owner lived. They knew
17 that the vehicle was near the home. Someone even - - -
18 Det. Thomas even went to the house.

19 And as we've heard, you know, if you want to go -
20 - - drive the car, you have to go from the house, cross the
21 sidewalk to the car. So it seems like there were
22 opportunities to make a stop of the defendant while he was
23 not driving the car. Why - - - why was it so important
24 that it only happened while he was driving?

25 MR. GUENTHNER: I think part of it is based on

1 the - - - the crimes they were investigating. First of
2 all, the seriousness of the first offense and the driver's
3 behavior in the second offense, they were concerned that
4 they don't necessarily have an opportunity to stop the
5 person outside the car.

6 JUDGE CANNATARO: Seems to me like this - - -
7 this suspect was more dangerous when he was in a vehicle
8 than when - - - than when he wasn't.

9 MR. GUENTHNER: Well, I think what - - - what
10 they do testify about is that they're waiting around the
11 corner because they don't want to necessarily appear before
12 they get - - - before he gets into the car and, potentially
13 - - - you know, based on what happened the day before where
14 the suspect runs away, you know, even based on a traffic
15 ticket. I think that sort of informed their decision to -
16 - -

17 JUDGE CANNATARO: Well, he ran away when he was
18 in the car on the traffic ticket, right? He pulled out
19 quickly and almost ran a traffic agent over. That's what I
20 mean. He's a menace when he's in a vehicle, maybe not when
21 he's just walking down the street.

22 MR. GUENTHNER: Well, I do think, also, the fact
23 that the car is sort of the instrumentality of both crimes
24 and they don't have a description of the - - - of the
25 driver from the second incident, I mean, that - - - that -

1 - - the traffic agent testifies later to that fact, but the
2 officers didn't necessarily know this is the person who
3 we're looking for, and so I think it was important for them
4 to connect the person that they suspected was involved in
5 both to the - - - to the car because the car is,
6 undisputedly, the same. That's as, you know, specific an
7 identifying characteristic as you can - - - as you can get.

8 JUDGE RIVERA: And his getting in the car is
9 what, then, makes that connection?

10 MR. GUENTHNER: It - - - yes, it narrows the
11 universe down to if not one person, a very small - - -

12 JUDGE RIVERA: Is that a presumption that the
13 person who gets behind the wheel is the person who was
14 driving it in the past?

15 MR. GUENTHNER: No. I think it's an inference,
16 and I think it's based on all the other facts that they had
17 in front of them. It's the fact, again, that it's the same
18 car - - - but not only that it's the same car, that it's a
19 privately owned car, that it is apparently nearby the - - -
20 the address where the second incident occurs. That - - -
21 that is as small a universe, I think - - - I think, as you
22 can get short of having a person's name and - - -

23 JUDGE RIVERA: And the inference that it's the
24 same driver every time.

25 MR. GUENTHNER: Correct. It's the inference that

1 it's the same driver in all three - - - I don't think the
2 fact that he owned it was dispositive to this case. I
3 mean, it - - - it certainly would - - - I don't think we
4 would - - -

5 JUDGE RIVERA: I don't know. It strikes me that
6 might have been the more natural inference.

7 MR. GUENTHNER: I think that - - - and I think
8 that's what they were - - - what they were looking for.
9 And - - - and just to - - -

10 JUDGE CANNATARO: I'm sorry. Who's the "they" in
11 that?

12 MR. GUENTHNER: The officers who conduct the
13 stop. And if you look at the - - - the record about the -
14 - - and - - - and from the - - - the body-worn camera
15 video, the - - - the first question they ask is, do you own
16 this car, and do you let anyone use it? And what the
17 officer testified to is, the reason that we ask for that is
18 we're trying to find out is this the same person. Not
19 necessarily because we now know that you own the car, we're
20 - - - you're under arrest. It's that - - -

21 JUDGE CANNATARO: But to make the stop, in order
22 - - - it sounds like you have to be allowed to make the
23 inference that the owner is the driver because you haven't
24 - - - until you do that, you know, you don't know who that
25 driver is. And they were specifically targeting the owner

1 in terms of, you know, they were in his neighborhood,
2 essentially, waiting for him to get in the car.

3 MR. GUENTHNER: I don't - - - I don't think the
4 record shows that. I think what the record shows is that
5 they were looking to see is the person who's driving the
6 car today the same person who was driving it before.

7 JUDGE CANNATARO: How would you know that short
8 of identifying them, you know, by their features? And
9 that's not the reason they stopped the car.

10 MR. GUENTHNER: The reason they stopped the car
11 is because the person who's operating it is the person
12 who's driving the same vehicle from the two previous
13 incidents.

14 JUDGE CANNATARO: How do you know that?

15 MR. GUENTHNER: Well, it's a - - - it's a
16 suspicion. I mean, it's not something that they know with
17 - - - with certainty.

18 JUDGE CANNATARO: Is that a reasonable suspicion?

19 MR. GUENTHNER: Yes, that - - - that is what the
20 reasonable suspicion is.

21 JUDGE CANNATARO: Because why?

22 MR. GUENTHNER: Because of all of the facts that
23 go to - - - again, the specific car on all three days, that
24 it's privately owned, that it's nearby, both geographically
25 and - - - and temporally, and the fact that the crimes that

1 they were investigating - - - you have two serious
2 incidents, one involving a firearm, a second involving
3 erratic driving that nearly results in a traffic agent
4 being hit by a car, and I think the nature and gravity of
5 the offenses that they were investigating supported a stop
6 based on the instrumentality that ties all three together.

7 And unless there are further questions, we ask
8 that you affirm the Appellate Division's order on this
9 mixed question.

10 CHIEF JUDGE WILSON: Thank you.

11 MR. GUENTHNER: Thank you.

12 MS. ZOLOT: As to the BOLO, what Det. Thomas
13 said, it's really unclear where this notion that this was
14 an armed and dangerous person came from because Det. Thomas
15 described the BOLO as a safety alert, which was just meant
16 to advise officers to exercise caution after they stopped
17 the car. So it wasn't - - - he certainly wasn't intending
18 that BOLO to be a basis in itself for stopping the car. So
19 there is an issue right there with at least the Appellate
20 Division's claim that the BOLO alone would provide
21 reasonable suspicion.

22 But as to the, really, central question here, did
23 the police have reasonable suspicion to stop this car with
24 the recognition that there had been two prior incidents
25 before, nothing respondent has said says anything about an

1 - - - would allow an inference as to who was driving the
2 car and that it was the same driver as before. That's
3 really what we are trying to emphasize here, that to draw
4 that same driver inference, you need something - - -
5 specific facts and circumstances, as are always required in
6 reasonable suspicion, to say it was - - - it's - - -
7 there's a reasonable suspicion that this driver/occupant
8 was involved in the criminality.

9 Yes, the car itself was involved in wrongdoing,
10 but ultimately, the Fourth Amendment and our state
11 constitution attach to people, and the question is whether
12 there is reasonable suspicion to suspect the driver or
13 occupants. And the fact that it's the same car with the
14 same license plate, that there were two prior incidents
15 involving the car, that it was privately owned, that it was
16 parked near his address, that says nothing about whether it
17 was the same person on all three occasions or whether it
18 was - - -

19 JUDGE RIVERA: Because your presumption is it's
20 not the same person.

21 MS. ZOLOT: It's - - -

22 JUDGE RIVERA: You have to start from there and
23 show that it is.

24 MS. ZOLOT: I - - - I - - - I think it's better
25 framed as there weren't specific facts allowing an

1 inference that it was and that it could well have been
2 someone innocent who had access to the car and had nothing
3 to do with the wrongdoing. Thank you.

4 CHIEF JUDGE WILSON: Thank you.

5 (Court is adjourned)

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

I, Donna Gould, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Zubidi (Amado), No. 14 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Donna Gould

Signature: _____

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