

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

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

No. 67

CARLOS L. DAVID,

Appellant.

20 Eagle Street
Albany, New York
September 13, 2023

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:

GUY TALIA, ESQ.
REEVE BROWN, PLLC
Attorney for Appellant
3380 Monroe Avenue Suite 200
Rochester, NY 14618

LISA GRAY, ESQ.
MONROE COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
47 South Fitzhugh Street
Rochester, NY 14614

ANDREW W. AMEND, ESQ.
ASSISTANT DEPUTY SOLICITOR GENERAL
28 Liberty Street Floor 14
New York, NY 10005-1495

Anne Manscill
Official Court Transcriber

1 CHIEF JUDGE WILSON: And the last matter today is
2 Number 67, People v. Carlos David.

3 MR. TALIA: Good evening again, Your Honors.
4 Once again, I'm Guy Talia on behalf of appellant, Carlos
5 David. I'd like to reserve three minutes for rebuttal, if
6 I may?

7 CHIEF JUDGE WILSON: Yes.

8 MR. TALIA: So at the outset, I'd like to note
9 that we are making a facial invalidity challenge that is
10 distinct and separate from any of the arguments that have
11 come before us today by any of the appellants. It does
12 not depend on -- the validity of it does not depend in any
13 way, shape, or form on the invalidation of the proper
14 cause requirement. It is based upon the foundational
15 holdings of Bruen that led the court there to invalidate
16 the proper cause requirement. And that is the extension
17 of the Second Amendment for the first time to carrying an
18 outside - - - carrying a loaded weapon outside your home.
19 And also the new test that it articulated for determining
20 whether the - - - any restrictions on that are valid.

21 Now, there are serious but uncomplicated
22 consequences of that extension. The - - - the prime one
23 that we are relying on is that it substantively prohibits
24 the State from defining the mere possession of a firearm
25 outside your home as a crime. Section 265.03(3) defines

1 the mere possession of carrying a firearm outside your
2 home as a crime. And my client was convicted on proof of
3 nothing more than carrying a firearm outside his home.
4 Now, the fact that there is an exemption and that the
5 licensing provision could have relieved him from that
6 liability - - -

7 JUDGE RIVERA: Your position is that licensing
8 is not an element?

9 MR. TALIA: Correct, Your Honor. That's exactly
10 our position. And - - -

11 JUDGE GARCIA: And there was a failure to charge
12 that element, that the jury had to find that element to
13 convict your client, right?

14 MR. TALIA: The jury did not have to find that
15 element to convict my client.

16 JUDGE RIVERA: Why - - - why isn't it obvious
17 from Hughes that it is an element?

18 MR. TALIA: Why - - - why isn't it - - -

19 JUDGE RIVERA: Obvious that it's - - - that it
20 is an element?

21 MR. TALIA: So - - -

22 JUDGE RIVERA: Why weren't we clear there? Why
23 wasn't the court clear there that what is criminalized is
24 not someone carrying a gun, someone without a license
25 carrying a gun.

1 MR. TALIA: Sure. Yep. So Hughes did state
2 that is not merely possession but unlicensed possession
3 that's a crime. And we - - - we do acknowledge that that
4 was at a time that Heller existed, and it involved in-home
5 possession.

6 JUDGE RIVERA: Uh-huh.

7 MR. TALIA: But the reason why Hughes does not
8 foreclose our argument here is because that was not an
9 issue in Hughes. The court was kind of observing - - - it
10 read the statutes together. It cited both 265.03 and
11 265.20(a)(3) for that proposition. So everyone admits
12 that when Hughes made that statement, which was not an
13 issue in the case - - - I mean, the case was about whether
14 the - - - the sentence can be enhanced by a prior
15 conviction. So the - - - the - - - the plaintiff and - -
16 - or the defendant in Hughes never made the argument that
17 there was an improper burden shift or that there was a due
18 process violation because he was convicted on non-criminal
19 conduct.

20 He acknowledged - - - he accepted his conviction
21 and - - - and assumed that the State could prosecute him,
22 that - - - that the burden - - - that there was no problem
23 with the burden shift there. So it observed that, but it
24 wasn't - - - it didn't - - - the issue wasn't squarely
25 before the court in Hughes. And so I don't think that you

1 can consider that a holding in Hughes. And the same issue
2 actually occurred in - - - in Guardado in the
3 Massachusetts court.

4 JUDGE RIVERA: I'm sorry. You're saying that at
5 post-Hughes, it was an open question as to whether or not
6 licensing is an element of the - - - the - - - the crime
7 of carrying - - - possessing unlawfully a gun outside - -
8 - public carry - - - that it was an open question?

9 MR. TALIA: Yes. I mean I - - - I don't think
10 it - - - I don't think it addressed the open carry at all.
11 There was - - - it was - - - it was addressing in-home - -
12 -

13 JUDGE RIVERA: That's what I'm saying. It left
14 that question open - - -

15 MR. TALIA: Yes.

16 JUDGE RIVERA: - - - whether or not what the
17 legislature intended to do? What the language of the
18 statute does is criminalize public carry regardless of
19 licensure.

20 MR. TALIA: I - - - I think it - - - to answer
21 your question - - - the first question, it's an open - - -
22 it was an open question after Hughes. Yes. Absolutely.
23 It was not - - - it was not definitively decided by the
24 court in Hughes that - - - Hughes did not make the
25 unlicensed - - - the unlicensed aspect an element of the

1 crime of two - - - of 265.03(3). It - - - it merely
2 observed that you - - - if you're - - - you know, if you
3 were possessing, you have the opportunity to raise as a
4 defense, licensure, and you can relieve yourself of that
5 liability. But I don't - - - it wasn't saying it - - -
6 the court couldn't read into 265.03 an additional element.
7 And that's why it cited both provisions when it - - - when
8 it did make that observation.

9 JUDGE HALLIGAN: But could a defendant stipulate
10 to the lack of a license, and therefore, create a
11 situation where the jury would not need to be instructed
12 that it had to find the lack of a license? In the same
13 way you might, for example, stipulate to a prior
14 conviction without having to prove it.

15 MR. TALIA: Well, I don't think a stipulation
16 would be necessary because the jury is not - - - is not
17 instructed on - - - on licensure at all. The jury - - -
18 our whole argument is the jury - - -

19 JUDGE HALLIGAN: Well, I mean - - - I mean going
20 forward, could - - - could a defendant stipulate to a lack
21 of a license? Or is it your position that a jury has to
22 make a finding either way?

23 MR. TALIA: Our position is that - - - that the
24 lack of a license is an element that has to be pleaded and
25 proven by the State. I - - - I don't know why a defendant

1 would stipulate to the lack of a license and then subject
2 himself to that - - - that crime.

3 JUDGE RIVERA: That proof could be circumstantial
4 evidence that need not be, right, an admission? It may not
5 be anything other than what might otherwise be sufficient
6 circumstantial evidence.

7 MR. TALIA: I'm not sure I'm following your
8 question, Your Honor. But - - - but our position is - - -

9 JUDGE RIVERA: Well, it was - - - I guess in what
10 way would the government prove, is what I'm talking about.
11 So it strikes me that there's no reason to carve a
12 distinction out here for this particular crime. You can
13 prove it through circumstantial evidence.

14 MR. TALIA: Well the point is - - -

15 JUDGE RIVERA: You can't envision - - -

16 MR. TALIA: - - - they don't have to prove it at
17 all.

18 JUDGE RIVERA: - - - that a defendant would
19 stipulate - - - would concede that there - - - they had no
20 license, let's put it that way. I'm saying you might not
21 necessarily need that from the defendant. You could have
22 some other way of proving, right, circumstantial
23 evidence - - - that could be reasonable inferences - - -
24 that the prosecutor might argue to establish this lack of
25 licensure?

1 MR. TALIA: Well, there's many ways you could
2 probably establish the lack of licensure. But - - -

3 JUDGE RIVERA: Sure.

4 MR. TALIA: - - - but the problem that we're - -
5 - that we're - - - are arguing is that there is absolutely
6 nothing right now - - - no reason for the State to do that
7 at all. They're - - -

8 JUDGE SINGAS: Yeah. But shouldn't he have
9 produced the license? The 400 requires a production of a
10 license. So is that burden of production a burden shift
11 and is that what you're arguing?

12 MR. TALIA: We're making two - - - two
13 arguments, Your Honor, yes. So the first argument is that
14 because the State is substantively prohibited from
15 defining the mere possession of a firearm in public as a
16 crime, and that's all that 265.03(3) requires, that it's a
17 due process violation to basically convict him only on
18 proof of that alone because you've convicted of a conduct
19 that's not criminal. It can't be criminal anymore. Now
20 the - - - respect to the burden of production, once - - -
21 you know once a state is substantively prohibited from
22 defining conduct as a crime, it can't shift the burden to
23 the defendant to - - - to - - - as a defense to say that
24 they're relieved from that liability or they're - - - or
25 they're subject to an exception.

1 CHIEF JUDGE WILSON: Well, that's the question,
2 is which burden can't they - - - can't they shift? Both
3 burdens, production and proof, or just proof?

4 MR. TALIA: We're arguing that - - - that it's
5 both burdens. They - - - they cannot shift the burden of
6 persuasion or even production in this - - - in this case.
7 And - - - and that is because - - - I think the nature of
8 defense is to justify conduct that is otherwise
9 permissibly prohibited. Let's say the State is
10 permissibly permitted to generally prohibit public
11 carrying which, prior to Bruen, it - - - it was and that's
12 what it did. And then the nature of the defense is to
13 say, oh, well I'm justifying conduct that is otherwise - -
14 - the State may otherwise permissively prohibit.

15 But when the State can no longer permissively
16 prohibit the public carry of a loaded firearm all - - -
17 all burden shifts are off. They - - - they have to - - -
18 they have to plead and prove not only the possession but
19 also the reason making that possession unlawful. And - -
20 - and the reason for making that possession unlawful is
21 either you're unlicensed or you're subject to some other
22 disqualifying factor.

23 So our position is that you cannot shift
24 either - - - either the burden of production or persuasion
25 in these circumstances. Now Mullaney is cited by the

1 Attorney General is arguably the only case where you could
2 say that they allowed a production - - - a burden of
3 production shift on what's - - - what they can - - call an
4 essential element of the crime. But Mullaney, I would
5 note - - - and the distinction there is that - - -
6 they're - - - the - - - the conduct at issue there was
7 other what the State was well within its right to prohibit
8 the intentional killing of someone. And then they chose
9 to add an additional element in the definition of that
10 crime. And in that situation where the - - - where the
11 State was allowed to permissively prohibit the underlying
12 conduct, it was a little - - - it was a little unclear.
13 But it seems like they did allow them to shift the burden
14 of production to the defendant to say, oh, well I did it
15 under extreme emotional disturbance. And then the State -
16 - - the burden would go back to the State.

17 But here we have a completely different
18 situation. After Bruen, the State is no - - - can no
19 longer permissively prohibit the mere possession of a
20 weapon outside your home. They have to prove something
21 else, something more making that possession unlawful. And
22 in that situation, I think the case law is clear as
23 Bailey, McFarland, Morrison - - - they're all Supreme
24 Court cases - - - all make that - - - make that point
25 quite clearly, I think. When the underlying conduct - - -

1 the State may not permissively prohibit that conduct - - -
 2 they can't shift either the burden of production or - - -
 3 or persuasion. And that - - - that applies even with - - -
 4 - the compared convenience test and with the rational
 5 connection - - - rational connection test.

6 So in - - - in light of that, we feel that you
 7 know, the - - - the - - - the conviction needs to be
 8 reversed and the indictment dismissed.

9 I can address preservation issues if you - - - if I
 10 may? I still have a little bit of time, I see.

11 So the futility item has been discussed
 12 extensively today. I mean, we have that as well. But we
 13 also - - - this - - - this also has the - - - the mode of
 14 proceedings. The fundamental organization of the courts
 15 under Martinez, convicting someone on conduct that cannot
 16 be defined as criminal. If there's nothing more
 17 fundamental to the organization of courts - - - of the
 18 courts than doing that. That's the Martinez case. And
 19 then we also - - - it is also fair squarely - - - falls
 20 squarely within the mode of proceedings in Patterson. The
 21 exact issue in Patterson was did - - - did he get the
 22 procedure mandated by law. And that - - - and that was a
 23 burden shift. They said, you know, is the State required
 24 to prove this as an essential element or can they shift
 25 the burden - - -



1 JUDGE HALLIGAN: Wasn't that a shift there in
2 both the burden of production and the burden of proof?

3 MR. TALIA: It was, Your Honor. It was.
4 Patterson involved shift of both the burdens. But - - -
5 but in terms of the mode of proceedings there, that's the
6 distinction without a difference. So it's - - - it's
7 still in the operational - - -

8 JUDGE CANNATARO: Why doesn't it make a
9 difference?

10 JUDGE HALLIGAN: Why - - -

11 JUDGE CANNATARO: I'm sorry. I think it was the
12 same question.

13 MR. TALIA: Well, because we're in terms of the
14 mode of proceeding, he's entitled to the procedure
15 mandated by law. In this case, as I just explained, we
16 don't think they can shift the burden of either production
17 or persuasion. So the procedure would be that the State -
18 - - the State needs to prove all the essential elements of
19 a crime. That's under Winship. And Patterson involved
20 persuasion, but in terms of the - - - the procedure, it's
21 the same. If you can't shift the burden of production or
22 persuasion, it's - - - it's the same procedural problem.

23 JUDGE CANNATARO: What's to say that the - - - the -
24 - - the defendant in this scenario can't put into issue
25 the licensure, which is the burden of production, not

1 really the burden of proof? No one's denying that, you
2 know, if - - - if there's an issue in the case, it's the
3 People's burden to prove it. But why can't we ask the
4 defendant to put the People on notice that they have to do
5 that?

6 MR. TALIA: I think that goes to the - - - the
7 things that I - - - the things that I've stated so far.
8 It's a violation of the wing - - - the principle in
9 Winship. It says the State must prove all the elements of
10 a crime beyond a reasonable doubt. And if you shift the
11 burden of - - - of even production to the defendant to
12 produce a license, the State is relieved of - - - of that
13 - - - of that burden to prove all the elements because
14 if - - - if we all agree that only unlicensed possession
15 is unlawful, then the State - - - we're saying the State
16 has to prove possession, and that it was unlicensed, or
17 similar disqualifying factors.

18 JUDGE RIVERA: Let me ask you - - - or perhaps
19 it's obvious, but isn't - - - do we have to actually get to
20 that question? Because if there's no instruction - - - no
21 instruction at all about license or forget about who's
22 carrying the burden - - - just no instruction at all to the
23 jury that you've got to find that the defendant did not
24 have a license, isn't - - - doesn't that end the issue?
25 Isn't that enough for you to prevail on this question? Do

1 we have to get to this question of the burden shifting?

2 MR. TALIA: No. You don't.

3 JUDGE RIVERA: If it's - - - if we agree it's an
4 element.

5 MR. TALIA: Right. Your Honor, they're exactly
6 correct. I mean that's - - - that's - - - that's the
7 first core part of our argument. There - - - the inquiry
8 can arguably end there.

9 JUDGE GARCIA: But did you have to object to the
10 jury instruction? Especially if it was unclear whether
11 this was an element or not.

12 MR. TALIA: Well, I have to - - -

13 JUDGE GARCIA: Do you have an obligation to
14 preserve? Because we said you have an obligation to
15 preserve objections to jury instructions, right?

16 MR. TALIA: Yeah. I believe that is correct,
17 Your Honor. But here it's - - - it's - - - there would be
18 no grounds to object to the jury instructions because
19 there was - - - it was clearly the procedure in the State
20 as - - - as - - -

21 JUDGE GARCIA: We never made clear that that was
22 sufficient that you could prove without proving a license,
23 given Hughes? Have we said that - - - had we ever said
24 that, that you could do what they did here?

25 MR. TALIA: That - - - to convict without - - -

1 without proving element? No, I don't - - - I don't
2 believe this Court has ever said that that - - - that can
3 - - - that could be done.

4 JUDGE RIVERA: I don't - - - have we ever said
5 you have to - - -

6 MR. TALIA: No. I don't think this issue - - -

7 JUDGE RIVERA: - - - that - - - that - - - that a
8 conviction can stand if an element wasn't charged to the
9 jury, regardless of whether or not you preserve an
10 objection to the lack of an instruction?

11 MR. TALIA: Exactly correct. Yeah. It cannot
12 stand if the - - - if the - - - someone cannot be
13 convicted on proof of conduct that cannot be defined as
14 criminal, which is what - - - which is - - -

15 JUDGE GARCIA: Do we have a case where we've said
16 we - - - you don't have to preserve an objection to that
17 type of jury instruction? I mean - - -

18 MR. TALIA: Well, I'm not sure - - -

19 JUDGE GARCIA: I know there's a federal case that
20 says exactly the opposite in terms of a very similar issue;
21 that if you want to insulate your convictions, then enforce
22 the rule about objecting to the jury instruction.

23 MR. TALIA: Well, I'm not - - - I'm not sure what
24 exactly the objection to the jury instruction would - - -
25 would be here. I mean, it would be I guess - - -

1 JUDGE GARCIA: I'm not charging a crime.

2 MR. TALIA: Well, like I said, this goes back to
3 the - - - there were no grounds to make that objection
4 prior to Bruen. Prior to Bruen, I think it was widely
5 accepted that the process that we're complaining about now
6 was okay, because prior to Bruen there - - - there was no
7 constitutional, fundamental core right to carry a handgun
8 outside your home. It was freely regulated by the State.
9 So the State - - - if - - - prior to Bruen, it fell in the
10 category of the State's ability to define how they want to
11 prosecute their crimes and - - -

12 JUDGE RIVERA: If - - - if we disagree - - -
13 if we disagreed in your interpretation of Hughes and
14 thought that Hughes made it clear that this is an element,
15 would you then have had to preserve?

16 MR. TALIA: Well, I'm - - - I can't - - - I find
17 it hard to answer that question because I - - - I don't
18 see Hughes as - - - as saying that there - - - that this
19 was an element - - - an element. If Hughes said that this
20 was an element, I don't think it could've allowed the - -
21 - the burden shift or the conv - - - it would be a
22 different problem with that conviction if - - - if - - -
23 if Hughes said it was an element. And I don't think
24 Hughes - - - like I said, can't rewrite the statute to
25 include an additional element. It was reading two

1 statutes together. And the - - - the - - - the
2 consequence of it being in two separate statutes is the
3 burden - - - is the burden shift. So I'm not sure if that
4 answers your question or not, Your Honor, but - - -

5 JUDGE RIVERA: Thank you.

6 CHIEF JUDGE WILSON: Thank you, Counsel.

7 MR. TALIA: Thank you, Your Honors.

8 MS. GRAY: May it please the court. Good
9 evening, Your Honors. I'm Lisa Gray for the People. Just
10 with respect to the Hughes matter, you know - - - and
11 Hughes was pretty clear that, you know, a person who
12 possesses - - - you know, a person who has a valid license
13 commits no crime. And it's our position that 265.03(3),
14 read together with 265.20, which is a proviso, the People
15 don't have to plead in the first instance lack of
16 licensure in order to establish all the elements of
17 265.03(3).

18 JUDGE CANNATARO: Even post-Bruen?

19 MS. GRAY: Even post-Bruen, because unlicensed
20 possession of a firearm is not cause - - - in - - - in
21 public - - - unlicensed possession of a firearm, in
22 public, is not constitute - - - constitutionally protected
23 conduct under Bruen. Bruen said law abiding - - -
24 ordinary, law-abiding citizens have a right to publicly
25 carry firearms. In this case, Mr. David did not have a

1 license. And he carried his - - - he carried his
2 unlicensed weapon in public. And he actually had two in
3 his motor vehicle. He was engaged in conduct that was not
4 constitute - - - constitutionally protected, even after
5 Bruen.

6 JUDGE CANNATARO: So it's the intention of your
7 office to continue to charge CPW and go to trial in these
8 cases without proving as an element of your prima facie
9 case that the defendant lacked a license?

10 MS. GRAY: We don't have to prove lack of
11 licensure because 265 - - - 265.20 exists. Because if
12 the - - - if the person who is suspected of possessing an
13 unlicensed firearm has a license, present that license.
14 It's a bar to prosecution.

15 JUDGE CANNATARO: Otherwise - - - and if not, we
16 get to assume that you didn't have one?

17 MS. GRAY: Correct, which I think kind of goes
18 to your point a little bit, Justice Hall - - - just - - -
19 Judge Halligan, when talking about a stipulation. We
20 don't necessarily need a stipulation because 265.20
21 exists.

22 JUDGE HALLIGAN: If - - - but doesn't that - - -
23 doesn't that really sidestep the question of whether or
24 not the lack of a license is an essential element because
25 otherwise I - - - I think one could read Bruen as saying

1 that public carry is presumptively protected.

2 MS. GRAY: Of an ordinary, law-abiding citizen.

3 And I think - - -

4 JUDGE HALLIGAN: But what makes - - - it seems
5 to me, if I'm understanding your argument, that what makes
6 the citizen in your example not law abiding is the lack of
7 a license?

8 MS. GRAY: Because they - - - yes, because they
9 did not submit themselves to the - - - to the licensing
10 scheme.

11 JUDGE HALLIGAN: And - - - and so I'm not sure I
12 see, if you can help me, how the fact that the - - - the
13 person is therefore not law abiding, advances the ball in
14 terms of whether the lack of a license is an essential
15 element or not.

16 JUDGE CANNATARO: There is this circularity to
17 the reasoning, isn't there?

18 MS. GRAY: I mean, I - - - I think when we're
19 prosecuting CPW statutes, 265.03(3) and 265.20 go hand in
20 hand. I've never come across a case where somebody has
21 been prosecuted under 265.03 and they've had a valid
22 license. They've carried that - - - they - - - they've
23 carried a - - - a lawfully licensed, loaded handgun in
24 public and was still prosecuted under 265.03.

25 JUDGE HALLIGAN: But he - - - but I'm not sure

1 that that answers the question or maybe I'm missing it.
2 And I realize it is also late in the day. I'm not sure
3 that that answers the question of whether or not the lack
4 of a license is an essential element. I understand your
5 point, I think, about how the ordinary defense works in
6 operation of 265.03. But what about whether it's an
7 essential element?

8 MS. GRAY: It - - - I'm trying to - - - I'm
9 trying to choose my words carefully. Lack - - - the lack
10 of licensure is not an element in our statute. It's not -
11 - - it's criminal possession of a weapon. Unlike some of
12 the other states, there was a reference to the
13 Massachusetts case. That is unlicensed possession of a -
14 - - of - - - of a weapon. I might be paraphrasing a
15 little bit. But the word unlicensed appears in that
16 statute. In New York, it's criminal possession of a
17 weapon.

18 JUDGE GARCIA: But isn't the point it can't be
19 criminal if you don't show you don't have a license?

20 JUDGE HALLIGAN: License - - -

21 JUDGE GARCIA: I mean, I think there are - - -

22 MS. GRAY: It's so - - - it's so - - -

23 JUDGE GARCIA: I think if I - - -

24 MS. GRAY: - - - minimal - - -

25 JUDGE GARCIA: - - - boil it down a little is

1 what we used to criminalize in New York before is now not
2 only not criminal, it's constitutionally-protected conduct.
3 So in order for you to prove a crime, you need to prove the
4 unlicensed element. Otherwise, all you're proving is
5 someone exercised their Second Amendment right.

6 MS. GRAY: But when the - - - when the person
7 who's accused of criminally possessing a weapon in public,
8 they can present their pistol permit easily. They can - -
9 - that burden of production that - - - that - - - that - -
10 - that - - - that production is so minimal. It's so
11 small. And - - - and it serves to then, you know,
12 ultimately, you know - - - again, ultimately would - - -
13 would - - - would bar any then further intrusion or - - -

14 JUDGE RIVERA: It's - - - it's - - - it's just as
15 simple - - -

16 MS. GRAY: - - - or arrests or subsequent
17 litigation.

18 JUDGE RIVERA: - - - it's just - - - it's just
19 even if that was the way to approach the question, it's -
20 - - it's just as simple for the People to make the
21 argument you're making now, it's - - - that's
22 circumstantial evidence. He never produced a license.
23 You didn't find it on the wallet. You didn't find it
24 anywhere in their vehicle. You didn't find it on their
25 person, correct? Okay.

1 MS. GRAY: And - - - and - - - but it's just as
2 simple for - - - for - - - for - - - for investigative
3 purposes, for the person who has that look - - - who has
4 that gun in public to produce that license. When it's
5 found in the - - -

6 JUDGE RIVERA: Oh. I understand.

7 MS. GRAY: - - - when it's found in the glove
8 box.

9 JUDGE RIVERA: I understand that. Okay. So just
10 to be clear, your position is that post-Hughes, it was
11 either absolutely clear that this was not an element, or it
12 was not certain it was an element?

13 MS. GRAY: It's my position that it - - -

14 JUDGE RIVERA: You'll agree with - - -

15 MS. GRAY: - - - it was clear it wasn't an
16 element.

17 JUDGE RIVERA: - - - him that Hughes did not
18 decide that licensing is an element.

19 MS. GRAY: Hughes did not decide that licensing
20 is an element. That's my position. That - - -

21 JUDGE RIVERA: You agree with him.

22 MS. GRAY: - - - lack - - - lack of licensing is
23 not an element for criminal possession of a weapon - - -

24 JUDGE RIVERA: Okay.

25 MS. GRAY: - - - in New York.

1 JUDGE RIVERA: Okay.

2 JUDGE GARCIA: Even now?

3 MS. GRAY: Even now because you - - - because
4 it's still - - - I guess I've said it now three times.
5 But it's still unprotected conduct because Bruen spoke
6 only to ordinary, law-abiding citizens who, you know, when
7 they went to go apply for their public carry permit had to
8 then go, sort of, jump through the extra hoop of - - -
9 of - - - of proper cause to, you know, obviously establish
10 an elevated need for public carry.

11 But again, it didn't speak to the criminal
12 statutes. And Bruen didn't - - - and sort of - - - it
13 didn't magically decriminalize criminal possession of a
14 weapon in the second degree here in New York State.
15 People still have to submit themselves to licensing
16 schemes. Now they have to be constitutional. And - - -
17 and Mr. - - - Mr. David, he - - - he didn't do that. He,
18 you know - - -

19 JUDGE RIVERA: So you say then it's a defense?
20 Your point, that it's a defense?

21 MS. GRAY: I don't - - - I - - - I - - - I mean,
22 I - - - it's a bar - - - it's a bar to prosecution. I
23 don't know that it's necessary. It's an ordinary defense.
24 It's a - - - it's a bar to prosecute - - - it's a proviso
25 that exists outside the statute. It isn't - - - lack of

1 licensure is not an element for criminal possession of a
2 weapon in the second degree. And even post-Bruen, it
3 still exists that way. Bruen did not affect - - -

4 JUDGE RIVERA: I am having difficulty
5 understanding this distinction that you're making, that
6 it's not an element but you can't prosecute it unless
7 they're unlicensed?

8 MS. GRAY: Because it's such a - - - it's such a
9 minimal thing for the accused to do. Show us your license
10 and we can all go on our way. And we won't get - - - you
11 won't be criminally prosecuted.

12 JUDGE RIVERA: Sounds to me like that - - - like
13 that means the nature of the crime is if you're unlicensed,
14 you've - - - you're in criminal possession of a weapon.

15 MS. GRAY: Well again, you know, it has to be
16 read in conjunction with 265.20. It's - - -

17 JUDGE RIVERA: Uh-huh.

18 MS. GRAY: - - - it's - - - it is possession of
19 a weapon not outside your home or place of business. But
20 it's a bar of prosecution if you've produced your pistol
21 permit for that particular firearm that you're possessing
22 in public. And you know Mr. - - - Mr. David didn't have a
23 pistol permit for either one of these firearms. He
24 certainly didn't produce anything to indicate that he had
25 them. He didn't submit himself to any licensing scheme,

1 which - - - so - - - so you know, the People's position is
2 that, you know, none - - - none of these - - - I don't
3 want to go - - - I certainly don't want to go back to
4 preservation and standing. The court has heard, I think,
5 almost every single argument to be made.

6 JUDGE HALLIGAN: Can I ask you one specific
7 question - - -

8 MS. GRAY: Sure.

9 JUDGE HALLIGAN: - - - on preservation. If I
10 am - - - am understanding correctly - - - tell me if I'm
11 not - - - I believe that the defendant looked to file a
12 supplemental brief in the Appellate Division; is that
13 right?

14 MS. GRAY: Oh. Judge Halligan, I think you got
15 me on that one. I - - -

16 JUDGE HALLIGAN: I was trying to understand if
17 that - - - if that was correct, how that might affect
18 our - - -

19 MS. GRAY: I - - -

20 JUDGE HALLIGAN: - - - understanding of - - - of
21 preservation.

22 MS. GRAY: Okay. I'm - - - I'm unaware of his -
23 - - of his attempts to file any supplemental brief at the
24 Appellate Division. I am unaware of that. Going briefly
25 with respect to preservation and whether or not lack of

1 licensure is an element of the crime, you know, to your -
 2 - - to your point, Judge Garcia, there was no objection to
 3 the jury instruction. There was no trial order of
 4 dismissal that perhaps defense - - - defense attorney
 5 could have raised to say the People input forth prima
 6 facie evidence of a crime; they didn't put in sort of any
 7 evidence with respect to lack of licensure. Defense
 8 counsel never did any of that. So to a certain - - - to -
 9 - - so it is unpreserved. These claims are all
 10 unpreserved on - - - on many levels. And unless there are
 11 any other questions, I think that's it. Thank you.

12 CHIEF JUDGE WILSON: Thank you.

13 MR. AMEND: May it please the court. Andrew
 14 Amend again for the Attorney General. Defendant Carlos
 15 David's statements that were part of the People's case-in-
 16 chief in this prosecution were flatly inconsistent with
 17 his - - - flatly inconsistent with his having a license
 18 for those guns. In New York, handgun licenses are
 19 particular to the weapon. They have to specify, among
 20 other things, the caliber, make, model, and serial number
 21 for the weapons.

22 JUDGE TROUTMAN: And what do you say about it
 23 being - - - whose burden is it after Bruen?

24 MR. AMEND: Our - - - our position is - - - and
 25 I'll explain this - - - it is the defense's burden to put



1 licensure in issue. Bruen did not - - -

2 JUDGE TROUTMAN: Well, if having a license is a
3 bar, why don't the People have to establish that he doesn't
4 have one?

5 MR. AMEND: The way that New York has long - - -
6 this court has long interpreted its statutes, including
7 for criminal possession of a weapon, is that if the
8 defense is - - - or if the offense and provisos that
9 provide an exemption from prosecution for that offense are
10 located in different statutes, that is what it - - - that
11 puts on the defendant what is called an ordinary defense.

12 JUDGE HALLIGAN: But isn't the question whether
13 they - - -

14 MR. AMEND: They have to put in an issue.

15 JUDGE HALLIGAN: - - - that's permissible in - -
16 - in light of Bruen if - - - if we conclude in light of
17 Bruen that the lack of a license is an essential element?

18 MR. AMEND: It would be - - - no, it - - - it
19 wouldn't. I would also say that - - - that what - - -
20 what my client or what my adversary is assuming are a
21 couple of things. One, that New York is, through this
22 mechanism, actually punishing lawful, licensed, or
23 otherwise authorized conduct. It is not. When police
24 arrested the defendant here - - -

25 JUDGE TROUTMAN: Okay. But - - -

1 MR. AMEND: - - - it was clear that that - - -

2 JUDGE TROUTMAN: - - - accepting that - - -

3 MR. AMEND: Yes.

4 JUDGE TROUTMAN: - - - that that's certainly not
5 their intent, to punish otherwise lawful possession, why
6 isn't it the People's burden to prove that I'm not lawfully
7 carrying it because I don't have a license?

8 MR. AMEND: Bruen did not establish - - - and
9 Bruen itself was clear about this - - - the right to have
10 any weapon at any place in any manner. It is subject to
11 restrictions by the State - - -

12 JUDGE TROUTMAN: No, no. That - - -

13 MR. AMEND: - - - and - - -

14 JUDGE TROUTMAN: I agree with you there. But I'm
15 asking you about the - - - you - - - you did say or - - -
16 or are you disagreeing that absence of the license is what
17 makes it a crime?

18 MR. AMEND: Absence of authorization of which
19 licensure is one type, but of which there are many
20 different categories, all of which, you know, the People
21 would, I think, under defendant's reasoning have to
22 disprove. And there's nothing in Bruen that says that a
23 State which can impose all of these lawful restrictions
24 cannot enforce those restrictions by saying carrying a
25 weapon is a crime unless you have an exception. And then

1 placing a minimal burden of - - - of proof.

2 JUDGE TROUTMAN: Why is it a minimal burden - - -

3 MR. AMEND: Pardon me. Not burden of proof - -
4 - a minimal burden of proof - - -

5 JUDGE TROUTMAN: Why is it a minimal burden on
6 the defendant and not the People? That - - - they have
7 licensing apparatuses all over the State. I'll admit that
8 they're different upstate versus downstate, having
9 participated in that process. But why - - - why can't - -
10 - why isn't it the People's burden to prove that - - -

11 MR. AMEND: If - - - if - - -

12 JUDGE TROUTMAN: - - - you don't have a license?

13 MR. AMEND: If we're talking about the - - - the
14 comparative convenience test, it is what I think is
15 indisputable is that someone knows right away whether they
16 have a gun license. It's not the type of thing that you
17 forget.

18 JUDGE HALLIGAN: But can you get to that test if
19 it's an essential element?

20 MR. AMEND: Yes.

21 JUDGE HALLIGAN: Okay. So what's - - - tell us,
22 if you would, what's the best case that supports that
23 proposition that - - - that comparative convenience
24 could - - - could allow for the out - - - for - - - for
25 that specific element not to be charged?



1 MR. AMEND: Morrison v. California itself. What
2 that case said, it actually it - - - it took out of the
3 statute, unless the defendant raised the issue,
4 occupational ownership of farmland by someone who was of a
5 race that was ineligible for naturalization. And what
6 the - - - that was not a crime if the person was a natural
7 born citizen. And what the U.S. Supreme Court said was
8 permissible was that if those other factors were proved,
9 then the element of not being a citizen could be - - -
10 that burden could be shifted to the defendant. And the
11 test it articulated was the State shall have proved enough
12 to make it just for the defendant to be required to repel
13 what has been proved with excuse or explanation.

14 CHIEF JUDGE WILSON: So you did - - -

15 MR. AMEND: And that - - -

16 CHIEF JUDGE WILSON: You did quickly pass
17 through something that I found a little helpful, which is
18 that in just the licensure, there are other ways that
19 somebody is entitled to possess a firearm publicly. For
20 example, if you're a police officer, that's a statutory
21 exemption, right?

22 MR. AMEND: Yes.

23 CHIEF JUDGE WILSON: So I mean, taking the
24 defendant's argument here on this point to its logical
25 conclusion, you might also then have to prove that the

1 defendant was not a police officer, was not a federal
2 agent, was not all the other things that are exclusions?

3 MR. AMEND: That is correct.

4 CHIEF JUDGE WILSON: And that seems a little
5 unreasonable.

6 MR. AMEND: It - - - I couldn't say it better
7 myself. What I would also say is that in any given case
8 the circumstances - - - no one comes to court charged with
9 CPW, you know, just having walked off the moon. There are
10 circumstances that are going to be presented as were
11 presented here. And if those circumstances on the - - -
12 on their face suggests authorization, then it is a very
13 easy thing indeed for a defendant to do - - - to say the
14 People's case proves that - - - that I am authorized to do
15 this. And People then have the burden of disproving that
16 beyond a reasonable doubt.

17 JUDGE RIVERA: But I - - - I- - -

18 MR. AMEND: Under the circumstances - - -

19 JUDGE RIVERA: - - - I - - - I can't see even - -
20 - even with this question about then you'd have to disprove
21 all those other bases for authorization, why that doesn't
22 go just to circumstantial evidence. One would think that
23 an individual who's an officer would say so.

24 MR. AMEND: Yeah. Indeed. One would think so.
25 But this is - - - this gets back to the Morrison test. If

1 the circumstances do not suggest authorization for the
2 conduct - - -

3 JUDGE RIVERA: Okay.

4 MR. AMEND: - - - which is criminally
5 prescribable without authorization - - -

6 JUDGE RIVERA: Yes.

7 MR. AMEND: - - - and the individual, then the
8 State has proved enough to make it just for the defendant
9 to be required to repel what has been proved with excuse
10 or explanation. The defendant then says I am a police
11 officer. We naturally expect that. And then the People
12 have to disprove that beyond a reasonable doubt. That is
13 an orderly - - -

14 JUDGE RIVERA: It just strikes me as you have
15 your circumstantial evidence. The defendant can choose to
16 put up a defense or not. The jury can draw whatever
17 inferences appear reasonable given the evidence presented.

18 MR. AMEND: Yes. And I'm saying that that is -
19 - -

20 JUDGE RIVERA: That's different from saying that
21 they have - - - they have to shoulder a particular burden.

22 MR. AMEND: What you're talking about - - - what
23 we're talking about, Your Honor, is - - - is a burden of
24 coming forward. It is a minimal burden. I would point
25 out that in People v. Anonymous, that's a 2020 case cited

1 on page 22 of the District Attorney's brief, the defendant
2 made essentially the same arguments here about proof of
3 licensure on appeal from a conviction for possessing a gun
4 in a residence.

5 The First Department observed, first of all,
6 that the defendant is essentially raising unpreserved
7 issues of legal sufficiency, statutory interpretation, and
8 constitutional law. This court denied leave. The First
9 Department also rejected the claim on the merits,
10 remarking that the statutory scheme placed only a minimal
11 burden on defendants to raise exemptions from prosecution
12 in the first instance. This is like giving notice of an
13 alibi defense, it - - - it lets the People know what's in
14 the case and - - - and what is not. It operates, as Judge
15 Halligan suggested, as a stipulation that the possession
16 was in fact unlawful, and the People need not be put to
17 the proof of disproving all of these types of
18 authorization unless one is - - -

19 JUDGE RIVERA: What about the jury instruction
20 issue?

21 MR. AMEND: The defendant, by his own conduct,
22 has chosen to remove that issue from the jury's
23 consideration. And there is - - - that is what a burden
24 of coming - - - how the burden of coming forward works
25 here. And there's nothing unfair about that. If the

1 defendant is on notice of the need to do so, and the means
2 to do so are - - - are easy.

3 JUDGE RIVERA: Well, then you would have a
4 conviction without a jury finding that the individual is
5 unauthorized or has a license; is that - - -

6 MR. AMEND: That is correct. But that is a
7 result of the defendant's own conduct and the - - - the
8 circumstances, you know, under which he has chosen to let
9 that case go to the jury. In this case it - - - just as
10 in People v. Anonymous, the defendant could have said,
11 wait, you haven't charged the jury on my lack of
12 licensure. His defense was, I didn't possess the guns.
13 He's now saying - - - but in the alternative, if I did,
14 they were licensed. They - - - the - - -

15 JUDGE TROUTMAN: So you're saying it's - - - it
16 was a strategic decision not to request it?

17 MR. AMEND: And not - - - not to raise the
18 argument not to pursue the defense, this again - - - the
19 case parallels in this regard, People v. Easley where the
20 defendant argued in the trial court that the victim of his
21 sex offense was not incapacitated and then argued that it
22 was improper to - - - because the - - - the statutory
23 scheme put the burden on him of establishing that he
24 didn't know that the victim was incapacitated. His
25 defense took that issue out of the case.

1 JUDGE GARCIA: Just - - - just to go briefly to
2 the - - - the burden of disproving each of these various -
3 - - you know, any law enforcement officer. Let's say the
4 People come in and they prove as an element unlicensed.
5 You didn't have a license. At least in that situation
6 you've proved on its face what's a crime, what's not
7 authorized, right? What's not protected conduct. Then I
8 think you can say okay if you're going to come in and show
9 an exception to the licensing requirement, that's more on
10 the line of the defense. At least you have to raise it.
11 But once you've proved unlicensed conduct, I don't see the
12 need arguably to disprove every other exception to having a
13 license.

14 JUDGE RIVERA: Uh-huh.

15 MR. AMEND: I think the question is at what
16 point have the People proved enough to require the
17 defendant to repel what has been - - - what has been
18 proved. In this instance, first of all, the - - - the
19 People's proof in fact established a lack of licensure.
20 There is no way you can read this record in which, if he
21 had a license, he would have been required to carry it
22 with him. There's no dispute he didn't have one. And
23 then he was - - - and the license - - -

24 JUDGE HALLIGAN: Where in the record
25 specifically, is the proof that you're referring to, if

1 you would?

2 MR. AMEND: I - - - I - - -

3 JUDGE HALLIGAN: Briefly elaborate.

4 MR. AMEND: Sure. I - - - I cited it's - - -
5 it's cited in our brief. And I - - -

6 JUDGE HALLIGAN: Okay.

7 MR. AMEND: I regret not having the tech - - -

8 JUDGE HALLIGAN: If it's in the brief, that - -
9 - that's fine.

10 MR. AMEND: But his police interview was played.

11 JUDGE HALLIGAN: Okay.

12 MR. AMEND: And he said about the guns, I didn't
13 know they were there, I don't know anything about them,
14 they're not mine. If he had had a license for those guns,
15 it would have been specific to those guns.

16 JUDGE HALLIGAN: So you're referencing the
17 police interview which was played at the trial; is that
18 right?

19 MR. AMEND: Correct.

20 JUDGE HALLIGAN: Okay.

21 MR. AMEND: As part of the People's case-in-
22 chief.

23 JUDGE RIVERA: If they're not yours, you're not
24 going to have a license for them, right?

25 MR. AMEND: Correct. You - - -

1 JUDGE RIVERA: Yeah. I can't get a license for
2 something that is not my property.

3 MR. AMEND: I can't get a license for something
4 that's not my property. And if I had a license, it would
5 be specific to that property. So if I have no knowledge
6 or ownership of those guns, I can't have gotten a license
7 for them. It doesn't make sense.

8 JUDGE RIVERA: Understood.

9 MR. AMEND: And for that reason we would ask
10 that the court, if it were to find any error, would at
11 most find that the error is harmless and that it's not an
12 ideal case for this court to pronounce a broad new rule of
13 constitutional law.

14 CHIEF JUDGE WILSON: Thank you, Counselor.

15 MR. TALIA: Thank you, Your Honors. Just
16 briefly - - -

17 JUDGE RIVERA: The last word on a long day.

18 MR. TALIA: Yes. Yes.

19 JUDGE RIVERA: Last word. Relish it.

20 MR. TALIA: Thank you, Your Honor. I don't want
21 to talk too much about our argument. I think the court
22 has articulated it and understands it. I would just point
23 out that the Supreme Judicial Court of Massachusetts
24 invalidated a similar scheme on almost identical
25 reasoning.

1 JUDGE GARCIA: It was a trial also, right, in
2 Massachusetts?

3 MR. TALIA: Yes. I believe - - - I believe that
4 was after a trial.

5 JUDGE GARCIA: Does this analysis apply to pleas?

6 MR. TALIA: I'm sorry?

7 JUDGE GARCIA: Would it apply to a plea?

8 MR. TALIA: I think it would apply to a plea,
9 Your Honor, because the plea would be to the same - - -
10 the same elements. The plea would - - - in order to be
11 convicted, the plea would just be to possess the - - -
12 possess the weapon outside the home and that's it. I
13 don't - - - I've - - - I've done pleas. And they don't
14 ask about - - -

15 JUDGE GARCIA: In that though - - - in this case
16 you've had a trial. And the argument would be the
17 government hasn't met its burden of proof. And you got a
18 verdict and I think you're done, right; if you win, you're
19 done. In a case with the plea, you just get your plea
20 back?

21 MR. TALIA: Your Honor, I - - - I believe there
22 is a case on this and it's not coming to me at - - - at
23 the moment. And that talks about the - - - the
24 applicability of this to a - - - a plea as well. And I -
25 - - I - - - I'm sorry, I don't have it.

1 JUDGE GARCIA: But would the remedy for plea be
2 that you get your plea back or would it be it's over?

3 MR. TALIA: Well actually, you're - - - you're
4 talking about obviously convictions that are either on
5 direct appeal or if there's - - - if it supports a
6 collateral tax. So we're not talking about going forward,
7 just going forward if there's an - - - if it's an element,
8 it wouldn't be an issue. So if the plea is vacated on - -
9 - on these - - - on the grounds that they - - - that the -
10 - - that the defendant did not plea to an essential
11 element of the crime - - -

12 JUDGE GARCIA: You get your plea back, right?

13 MR. TALIA: I'm not sure. The People may be
14 able to - - - to retry them again or go back to the
15 original indictment. But if they're going back to the
16 original indictment, it wouldn't help them. They would
17 have to retry him under a reformer - - - reformulated
18 statute that the legislature would have to - - -

19 JUDGE GARCIA: Why can't they retry him and prove
20 that he's unlicensed?

21 MR. TALIA: Well I think that a retrial, that
22 under a new - - - a reformulated statute, I think there
23 might be ex post facto issues that the old statute - - -

24 JUDGE GARCIA: Let's say there was a case where
25 even under the old statute they made - - - the People were

1 put to the burden of proving this element and the jury was
2 charged that it was an element. But we're operating five
3 years ago. Is that conviction okay, or no?

4 MR. TALIA: So you're saying where they
5 voluntarily decided to prove the element that they weren't
6 required to prove? That - - - that raises - - - that
7 raises a different set of issues. I think you're correct
8 in that. If - - - if they did gratuitously go ahead and
9 say, well we're going to voluntarily ask him to either
10 plea to that element but - - - it doesn't - - - it doesn't
11 solve the problem because it's a facial - - - it's a
12 facial - - - the statute is facially invalid. So I don't
13 think it completely solves the problem. And - - - and the
14 fact that they voluntarily decided to do it in a
15 particular case doesn't prevent them from not doing it in
16 the next case. So if the statute is bad, then the statute
17 has to go. So I think - - - I don't think that would - -
18 -

19 JUDGE SINGAS: Could we read Bruen to say that in
20 order for you to be law abiding you have to be subject to a
21 licensing scheme?

22 MR. TALIA: No. I don't think we can, Your
23 Honor. I think - - - I mean Bruen in itself - - - and
24 Justice Alito's concurrence even says law-abiding people
25 were forced to violate the licensing scheme because of the

1 proper - - - when he was referring to the proper cause
2 requirement. And so I don't think that they view your
3 non-compliance with the licensing statute to be making
4 somehow law - - - non-law-abiding person.

5 You know, whether you're - - - whether you're
6 ineligible or disqualified, that might be a different - -
7 - a different situation. But the - - - the mere fact of -
8 - - on licensure doesn't make you a non-law-abiding
9 person. I don't believe Bruen - - - Bruen would - - -
10 would find that as well.

11 One final point with respect to the disproving
12 exemptions. The - - - the authority to carry a loaded
13 handgun in public is - - - does not derive from an
14 exemption to a general prohibition. And that's how New
15 York currently is. But after Bruen, that's not where it
16 comes from. The authority to carry a loaded handgun in
17 public comes from the Second Amendment. So a state
18 doesn't - - - the State doesn't have to disprove all these
19 exemptions. It has to prove that you're disqualified. So
20 I don't think that that's - - - that's - - - I don't think
21 that - - - that we would have that situation here where we
22 have to disprove all these exemptions. They would - - -
23 the authority derives from the Second Amendment. And the
24 State has to show why you're disqualified.

25 JUDGE GARCIA: So would you agree then if they

1 proved that you didn't have a license, they wouldn't have
2 to disprove all the others? There could be a burden at
3 least of production to come forward with evidence that I'm
4 a law enforcement officer, for example.

5 MR. TALIA: Yes. I think I would agree with
6 that, Your Honor. I hope the - - - but I think that the -
7 - - a properly-drafted statute could - - - could have, in
8 the first instance, that the State has to prove possession
9 plus unlicensure. And then I think that - - - that Bruen
10 would allow for the burden to go back to the defendant at
11 that point to rebut that. But about that presumption,
12 that they're - - - that - - - that they are not
13 disqualified even though they didn't have a license, yes.
14 I don't know if - - - I know it's late.

15 I - - - I did want to discuss the suppression
16 issue. There's another ground for, you know, dismissing
17 this indictment as well because my client was subject to
18 an invalid search. It's because the police did not follow
19 their own procedures in conducting the inventory search.
20 I don't think the People even dispute that he didn't
21 follow the procedures to the extent - - - and we think
22 that that could be a, per se, unreasonable violation of
23 the inventory search.

24 Even if they're arguing that the failure to
25 follow their own procedures wasn't necessary because the

1 Constitution doesn't require them to seek alternatives, we
2 still think the - - - the search was unreasonable. My
3 client hadn't even committed a crime. So the - - - the
4 expectation of his privacy was not significantly lowered.
5 And the justification for towing the car was, you know - -
6 - it did not - - - did not warrant, you know, not - - -
7 not least asking him, where is the owner and/or is there
8 someone else that can drive the car.

9 So I'd just like to make sure I mention that - -
10 - that suppression issue, as well.

11 CHIEF JUDGE WILSON: Thank you. No further
12 questions.

13 MR. TALIA: Thank you, Your Honors.

14 (Court is adjourned)

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, Anne Manscill, certify that the foregoing transcript of proceedings in the Court of Appeals of Carlos David v. Monroe County, No. 67, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Anne Manscill

Signature: _____

Agency Name: eScribers

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

Date: September 20, 2023

