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COURT OF APPEALS  
STATE OF NEW YORK

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THE PEOPLE OF NEW YORK,  
Respondent,

-against-

JASON BROWN,

Appellant.

NO. 51

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20 Eagle Street  
Albany, New York  
April 17, 2024

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 next matter in the  
2 calendar is People v. Brown.

3 MR. FERGUSON: Good afternoon, Your Honor. It's  
4 Harold Ferguson for appellant, Jason Brown. We'd ask for  
5 two minutes in rebuttal in this case.

6 CHIEF JUDGE WILSON: Yes.

7 MR. FERGUSON: If the people's standard were  
8 granted in this case, it would essentially vitiate this  
9 court's holding in Hinshaw and would create an odd  
10 situation where if a car is impounded for public safety and  
11 has to be independent of criminality, but a traffic stop  
12 doesn't have to be independent of - - -

13 JUDGE SINGAS: So is your argument that there is  
14 a public safety exception to the Fourth Amendment and it  
15 wasn't applied correctly here? Or there isn't one?

16 MR. FERGUSON: It would be naïve for us to say  
17 that there is no public safety exception for the people - -  
18 - for the police to stop a car. Even though this court has  
19 not specifically said that there is such a thing, it would  
20 be - - - I think it would be beyond the pale for us to make  
21 a suggestion that in no circumstance could the police stop  
22 a car for public safety.

23 JUDGE RIVERA: And then what's the - - - what's  
24 the standard? Doesn't De Bour say all of these stops are  
25 based on reasonableness?

1 MR. FERGUSON: It's several things.

2 JUDGE RIVERA: Um-hum.

3 MR. FERGUSON: There has to be specific,  
4 articulable - - - if you look at what this Pennsylvania  
5 Supreme Court did in Livingston, it is - - -

6 JUDGE RIVERA: Well, let's look at what we say  
7 first.

8 MR. FERGUSON: Okay. Specific articulable facts  
9 that it should be independent of any suspicion of  
10 criminality. And that the stop has to - - -

11 JUDGE RIVERA: We've said that - - -

12 MR. FERGUSON: - - - and that the stop has to be  
13 - - -

14 JUDGE RIVERA: We've said that - - - I'm sorry.  
15 We've said that somewhere?

16 MR. FERGUSON: Right. And the stop has to - - -

17 JUDGE RIVERA: Yeah, but where have we - - -  
18 where have we said that?

19 MR. FERGUSON: Right.

20 JUDGE RIVERA: What case law? What - - - where  
21 have we said that?

22 MR. FERGUSON: We - - - you have not.

23 JUDGE RIVERA: Okay.

24 MR. FERGUSON: You have not.

25 JUDGE RIVERA: I'm asking you for what we've

1 said. I'm sorry.

2 MR. FERGUSON: And - - -

3 JUDGE RIVERA: I'm not being clear. My  
4 apologies.

5 MR. FERGUSON: No. This court has not addressed  
6 the issue. This is the first time that it's come up.

7 JUDGE RIVERA: So why isn't this really a claim  
8 of an exigency based on what the officer said was the  
9 motivation for the stop? And - - -

10 MR. FERGUSON: But - - -

11 JUDGE RIVERA: - - - the observations and - - -  
12 and what the officer was concerned about. Why isn't that  
13 really just an emergency - - - an attempt at an emergency  
14 exception?

15 MR. FERGUSON: It's still within the community  
16 caretaking exception as one of the three possibilities is  
17 exigency. But here it is - - - he does not indicate that  
18 he is simply stopping this car under an exigency. He's  
19 also saying that he's stopping it because he thought  
20 something illegal was going on which meant that he needed  
21 reasonable suspicion.

22 JUDGE GARCIA: Counsel, but the Pennsylvania test  
23 in Livingston, they don't carve out it has to be a pure  
24 motive - - - excuse me, for being a community stop. Right?  
25 They say it can be mixed.

1 MR. FERGUSON: It can - - - that's what the  
2 Pennsylvania Supreme - - -

3 JUDGE GARCIA: Right.

4 MR. FERGUSON: - - - Court says. But I think it  
5 needs to be - - -

6 JUDGE GARCIA: So it would be a - - -

7 MR. FERGUSON: - - - independent.

8 JUDGE GARCIA: - - - subjective - - - this  
9 particular officer didn't have any criminal investigative  
10 intent?

11 MR. FERGUSON: I'm not sure which - - -

12 JUDGE GARCIA: So - - -

13 MR. FERGUSON: - - - if - - -

14 JUDGE GARCIA: - - - if the officer subjectively  
15 is saying, okay, this looks like maybe the person is having  
16 some issue, a health issue, but it could be a kidnapping.  
17 And that's not good. Because in the back of the officer's  
18 mind they have this idea that it could be criminal. So  
19 that's not a community caretaking function?

20 MR. FERGUSON: I don't believe it's a community  
21 caretaking function under the facts of this particular - -  
22 -

23 JUDGE GARCIA: No, no - - -

24 MR. FERGUSON: - - - case.

25 JUDGE GARCIA: - - - no, but just generally if

1 we're going to apply this test going forward. If we come  
2 up with a test.

3 MR. FERGUSON: There could be a situation where  
4 that - - - that is possible. But then it would really be  
5 the reasonable suspicion that the individual - - - that the  
6 police officer was stopping this car for - - -

7 JUDGE GARCIA: So again not a community caretaker  
8 situation?

9 MR. FERGUSON: No. That would be - - - I think  
10 if you thought that - - - if there was reasonable suspicion  
11 of a kidnapping, of course you would be able to.

12 JUDGE GARCIA: No, no, no. And understood. But  
13 this is below reasonable suspicion. So here's how I was  
14 thinking about this case. You have a police officer and  
15 they're walking beat. They're walking in a neighborhood,  
16 and they see a door swing open on a house. And they think,  
17 you know, it's unusual. You walk up to the front door.  
18 Don't object to the hypothetical until I'm finished.

19 So they walk up to the front door, and they knock  
20 on the front door. The person answers. They say  
21 everything okay here? Your door's swinging a little bit  
22 and the person says yes and they go on their way. And the  
23 officer goes on their way.

24 They meet an older person taking a walk. They  
25 know this is a community that has a senior facilities, and

1           they - - - the person looks a little confused, doesn't know  
2           which way they're going perhaps, a little or it goes one  
3           way, it goes another. They walk up to the person. They  
4           say, is everything okay? Can I help you get some place  
5           where you're looking for? We would agree that's fine.  
6           Right?

7                       MR. FERGUSON: Absolutely.

8                       JUDGE GARCIA: That's kind of a caretaking role  
9           for that officer; right?

10                      MR. FERGUSON: Absolutely.

11                      JUDGE GARCIA: Now, I assume the same types of  
12           concerns, but now that woman or that incident with the  
13           house is happening in something that's going down the road  
14           at thirty miles an hour. And is there a way - - - and I  
15           know this implicates different Fourth Amendment concerns,  
16           but is there a way that we can apply that same caretaking  
17           function that we would like to encourage to that situation  
18           where you have a moving vehicle. And if we're going to do  
19           that, what would the standard be?

20                      MR. FERGUSON: I think you have to be able to  
21           articulate specific facts which lead you to believe that  
22           there is a exigency or a public safety concern that  
23           indicates - - - in this particular case, if when the car  
24           door swung open, if they heard the individual in the car  
25           say help, or they saw the person try to exit the vehicle,

1 then there's that and I think you would have a public  
2 safety exception.

3 But here all you see is a door open and close.  
4 Nothing else. The - - -

5 JUDGE CANNATARO: Well, it's not nothing else  
6 because the vehicle is moving at the time the door opens  
7 and closes. It's - - - I think it was going thirty miles  
8 an hour? Twenty-five - - -

9 MR. FERGUSON: No, Your Honor.

10 JUDGE CANNATARO: - - - miles an hour?

11 MR. FERGUSON: It was going twenty miles an hour  
12 if you look at the reopened suppression hearing, which is  
13 below the speed limit. And it was a - - -

14 JUDGE CANNATARO: I'm not suggesting that there  
15 was speeding. But they - - - it seems to me, subjectively,  
16 that's an exceedingly unusual thing to see?

17 MR. FERGUSON: I - - -

18 JUDGE CANNATARO: A door open on - - - on a car  
19 that's moving down the road?

20 MR. FERGUSON: I think I disagree with you  
21 wholeheartedly on that. There are myriad - - -

22 JUDGE CANNATARO: You see that a lot?

23 MR. FERGUSON: There are - - - absolutely, Your  
24 Honor. It's the car - - - the little light on the car says  
25 car door is not closed properly. People open and close it

1 immediately. I mean, if it had swung open all the way and  
2 then it was open for a while and then it was closed, but  
3 that's not the situation.

4 JUDGE CANNATARO: If that - - - if that was the  
5 impetus for opening the door, did - - - would that not fall  
6 under the community caretaking exception? Hey, is  
7 everything okay? What's going on? I saw your door open  
8 and close.

9 MR. FERGUSON: Again, if - - - if what you had  
10 here was when they stopped the car if that was the  
11 question, but that's not the question that was asked.

12 JUDGE CANNATARO: So because he asked for license  
13 and registration and didn't start with is everything okay  
14 that sort of - - - you lose the ballgame on that?

15 MR. FERGUSON: If the idea was that the purpose  
16 of the stop was to see if somebody was in distress, the  
17 question should have been is everybody okay? Does somebody  
18 need assistance? Not can I see your license and  
19 registration - - -

20 JUDGE TROUTMAN: If the door - - -

21 MR. FERGUSON: - - - and where are you going?

22 JUDGE TROUTMAN: If the door opened and closed a  
23 second time would that be enough?

24 MR. FERGUSON: I don't believe so, Your Honor.  
25 Unless you saw the person attempting to exit the vehicle or

1 saying something. Is there - - - I mean, this - - -

2 JUDGE TROUTMAN: Would you - - -

3 MR. FERGUSON: - - - this - - -

4 JUDGE TROUTMAN: - - - not agree though if it's  
5 happened more than once that there may be an indication  
6 that there is a problem? It could be a child that - - -  
7 that shouldn't be in the front seat for instance. Or that  
8 a child is opening the door.

9 MR. FERGUSON: If that - - -

10 JUDGE TROUTMAN: But you can't tell because of  
11 the way the vehicle is.

12 MR. FERGUSON: Here, the - - - the individual  
13 couldn't even tell if it was a man or a woman.

14 JUDGE TROUTMAN: But my question to you, if it  
15 happens more than once? So opening/closing, even if it  
16 happens repeatedly, you're saying still not enough?

17 MR. FERGUSON: Okay. Repeatedly is different  
18 than once or twice. I think what - - - if it's repeatedly  
19 opening?

20 JUDGE TROUTMAN: So how many times does it have  
21 to open?

22 MR. FERGUSON: I'm not sure that there's a  
23 particular answer. But I think it would have to be  
24 multiple times. That would seem to indicate if you're  
25 opening and closing it that there may be a defect in the

1 door. And that would be something different as opposed to  
2 here where it's a singular event that is momentary in  
3 nature.

4 JUDGE HALLIGAN: Can I - - -

5 MR. FERGUSON: And - - -

6 JUDGE HALLIGAN: Can I ask you, does what is  
7 happening with the car matter? In other words, if you look  
8 at Livingston; right?

9 MR. FERGUSON: Um-hum.

10 JUDGE HALLIGAN: My recollection is the car there  
11 was stopped. And in Cady I think the car had been  
12 impounded so it was already under police control?

13 MR. FERGUSON: That's correct.

14 JUDGE HALLIGAN: Here we have a moving vehicle.  
15 Is there anything different with regard to how we might  
16 think about either the exigency or the degree of intrusion?  
17 Are those not - - - are those relevant to deciding how far  
18 or whatever - - - however we might formulate the rationale,  
19 exigency, community caretaking would - - - would stretch?

20 MR. FERGUSON: I think that what we're talking  
21 about here is that this would be an end run around Hinshaw.  
22 Because this would be a simple way to say, oh, I - - - I  
23 was - - -

24 JUDGE HALLIGAN: Right.

25 MR. FERGUSON: - - - I was raising it - - -

1 JUDGE HALLIGAN: But if you had for example a car  
2 in an impound lot as you do in Cady?

3 MR. FERGUSON: Um-hum.

4 JUDGE HALLIGAN: Would you have the same  
5 objection that you do now? Well, you wouldn't have I think  
6 quite the same concern about an end run around Hinshaw I  
7 don't believe?

8 MR. FERGUSON: Right. Because in those cases the  
9 car is - - - there is a different - - - this court has  
10 looked at things like in Tardi where the car is already  
11 stopped. A difference between a car that was stopped  
12 voluntarily by an individual as opposed to one that was  
13 stopped by the police. In this case, it's the police are  
14 stopping the car. So I do think there is a significant  
15 difference if the car is already stopped. Because those  
16 are the type of situation the police come upon a car is  
17 stopped alongside the road - - -

18 JUDGE HALLIGAN: And - - - and is that because of  
19 concerns about pretext? Or is it because you think that  
20 there would be - - - it would be less likely? Yeah, if you  
21 - - - if you have a disabled car in the side of the road,  
22 it - - - it seems to me there's a pretty obvious argument  
23 that that could be a risk either to the folks in the car or  
24 to the people who were driving down the highway; right?

25 MR. FERGUSON: Absolutely.

1 JUDGE HALLIGAN: So is that less so for a moving  
2 vehicle? I assume, for example, if you saw a car driving  
3 down the road and smoke was pouring out of the back, that  
4 would, I would think, qualify.

5 MR. FERGUSON: Yes. And I think also that there  
6 are also motor - - - motor vehicle laws that indicate that  
7 that type of smoke coming out is a traffic violation as  
8 well, that it's a violation of the motor vehicle law. So -  
9 - - but going back to, it is the danger of pretext here.  
10 If you look at this - - -

11 JUDGE RIVERA: Okay. But I - - - I'm just going  
12 to take you somewhere else.

13 MR. FERGUSON: Okay.

14 JUDGE RIVERA: It strikes me and we've already  
15 said what you're - - - what has gone here is subject to a  
16 reasonableness standard.

17 MR. FERGUSON: Yes.

18 JUDGE RIVERA: I understood your argument to be  
19 it isn't - - - it was not objectively reasonable to stop  
20 that car simply because the door swung open and closed?

21 MR. FERGUSON: That's absolutely - - -

22 JUDGE RIVERA: Okay.

23 MR. FERGUSON: - - - correct, Your Honor.

24 JUDGE RIVERA: All right.

25 MR. FERGUSON: That is - - -

1 JUDGE RIVERA: You've been - - -

2 MR. FERGUSON: - - - that the position we're  
3 taking.

4 JUDGE RIVERA: - - - multiple questions about why  
5 that's the case. And I understand your answers to that.  
6 Once the car is stopped, is there anything else to suggest  
7 that the officer was not so interested or not so concerned  
8 about whether or not someone was merely in distress?  
9 That's unrelated to law enforcement?

10 MR. FERGUSON: When you look at what the  
11 interaction between the officer and my client, as well as  
12 the failure to call the other officer, who was interacting  
13 with the passengers, we don't know what was said between  
14 those individuals. Did that officer ask if those  
15 passengers needed assistance? We don't know. The people  
16 didn't put that witness on.

17 And when you look at this - - - it was very  
18 simple. It's - - - is everyone okay? If that was the  
19 reason. And if you look at the paperwork that was created  
20 by this officer in the aftermath of this there is no  
21 mention of any of this. All it is? Is this was a proper  
22 traffic stop. It does not mention the opening and closing  
23 of the car door, does not mention that there was any public  
24 safety concern.

25 So contemporaneous to the stop here nothing that

1 the police officer indicated in writing was that this was a  
2 public safety concern.

3 JUDGE GARCIA: Counsel, just to go - - -

4 JUDGE SINGAS: So when you're - - -

5 JUDGE GARCIA: I'm sorry. Just to go back to  
6 your reasonableness standard, is that a different standard  
7 than Hinshaw? What's "reasonable" mean here?

8 MR. FERGUSON: I think - - -

9 JUDGE GARCIA: Is reasonable being Livingston?  
10 Or is reasonable something else?

11 MR. FERGUSON: I think it's specific, articulable  
12 facts, that a reasonable person could conclude that there  
13 was a public safety concern - - -

14 JUDGE GARCIA: Okay.

15 MR. FERGUSON: - - - in the situation.

16 JUDGE SINGAS: And that's the end of it? The  
17 exception is based only on the caretaking role, and there  
18 can be no criminal intent or subjective criminal reason for  
19 the police officer to make the stop?

20 MR. FERGUSON: That would be the standard that we  
21 would ask this court to create.

22 JUDGE SINGAS: That's what you're asking? Okay.  
23 So can I ask just one - - -

24 MR. FERGUSON: Sure.

25 JUDGE SINGAS: - - - quick hypo? If - - - let's

1           suppose a police officer's driving down the road and sees a  
2           driver vomiting out the side of the - - - of his driver's  
3           side window. And he's behind him, alerts, put - - - pulls  
4           him over. And says A, I don't know if he's okay. He looks  
5           sick, you know, obviously. Obvious indications that  
6           something's not well. And B, he might be a drunk driver,  
7           and we're going to - - -

8                       MR. FERGUSON: I think that's a different  
9           standard that you're talking about. There are a number of  
10          cases from other jurisdictions that indicate a vomiting  
11          passenger isn't sufficient to establish it reasonable. But  
12          in your case, she would have an individual - - - if they're  
13          vomiting out the window then the person isn't paying  
14          attention to - - -

15                      JUDGE SINGAS: But I'm - - -

16                      MR. FERGUSON: - - - what's happening.

17                      JUDGE SINGAS: - - - under your exception if that  
18          testimony was given at a hearing would the fact that the  
19          officer said I also suspected drunk driving, is that stop  
20          no longer good?

21                      MR. FERGUSON: It would have to articulate more  
22          as to why other than just merely vomiting I don't think  
23          would be an indication that the person was intoxicated.  
24          Usually, the stops for intoxication would be some type of  
25          action by the car. Either it'd be swerving, going - - -

1 going too fast, going too slow, the way that it was being  
2 driven.

3 Merely vomiting could be, you know, the person  
4 ate something bad at Taco Bell. And - - -

5 JUDGE GARCIA: But I think the judge's question  
6 goes more towards assume they don't have what you would  
7 normally have to pull over a car for suspicion of drunk  
8 driving. But you have a legitimate concern the person's  
9 health - - - it might be a health issue. Is the fact that  
10 you also suspect drunk driving negate the community service  
11 aspect of the stop? I think that's what that was - - -

12 MR. FERGUSON: Well, I think it goes back to - -  
13 - the idea is that is this going to be used as a pretext to  
14 get around Hinshaw? And what I see in this particular case  
15 - - -

16 JUDGE RIVERA: Well, I think your point - - - I  
17 think where you've been trying to go with this - - - it's  
18 not so clear in the briefing. But at the end of the day  
19 this is really just about the exclusionary rule.

20 MR. FERGUSON: That is correct.

21 JUDGE RIVERA: There's absolutely no reason any  
22 cop cannot approach anyone if they think someone is sick -  
23 - - vomiting, whatever it is - - - nothing stops them from  
24 doing that. It may indeed be within what they understand  
25 is their duty and obligation as a police officer. The only

1 question is whether or not, if they discover anything  
2 during that stop, it can be admitted at trial?

3 JUDGE GARCIA: So let me rephrase my - - -

4 MR. FERGUSON: That is correct.

5 JUDGE GARCIA: Let me rephrase my question. If  
6 you have someone who's pulling over and they suspect they  
7 might be ill, and they also in the back of their mind think  
8 because they're acting this way, they may be drunk driving,  
9 but they don't have enough for a stop on drunk driving  
10 would that be suppressed?

11 MR. FERGUSON: I - - -

12 JUDGE GARCIA: Does the dual motive then demand,  
13 I guess, suppression is what we're - - -

14 MR. FERGUSON: I think you - - -

15 JUDGE GARCIA: - - - talking about?

16 MR. FERGUSON: - - - need to have some type - - -  
17 it has to be articulated in a way that indicates that  
18 wasn't just a pretext. The danger that's the - - - the  
19 position the people are taking is it would allow police  
20 officers to post-hoc add a public safety exception to get  
21 around the fact that the - - - the stop did not meet the  
22 standard - - -

23 JUDGE GARCIA: But you still need - - -

24 MR. FERGUSON: - - - in Hinshaw.

25 JUDGE GARCIA: - - - under Livingston articulable

1 basis for doing a community safety - - -

2 MR. FERGUSON: That's - - -

3 JUDGE GARCIA: - - - stop.

4 MR. FERGUSON: - - - correct, Your Honor.

5 JUDGE GARCIA: But you may have the - - - so in  
6 my hypothetical you have that. Assume you have that based  
7 on the - - - but in the back of your mind you have another  
8 reason for this, maybe criminal.

9 MR. FERGUSON: We would say that it should be  
10 independent. And that's the position that we are asking  
11 this court to. I understand the position that Your Honor  
12 stated - - -

13 JUDGE GARCIA: Independent - - - I - - - I  
14 understand. I'm not trying to give you a hard time. But  
15 independent, to me, can mean two different kinds of things.  
16 Independent can mean I do have this reason which is a good  
17 reason. There may be other reasons too. But this  
18 independent reason is enough - - - or independent in  
19 thought? I don't have this other thought. Which is it?

20 MR. FERGUSON: I think it has to be that the  
21 purpose of it - - - other - - - otherwise what you are  
22 going to create here are two distinct standards. One which  
23 - - - one which you have done in Hinshaw and Tardi based  
24 upon Cady as to what you can do in terms of impound a car  
25 that is already stopped. And that would be - - -

1 JUDGE GARCIA: But we're beyond that somewhat. I  
2 mean one argument you have I think if you're still pressing  
3 it is Hinshaw limits this and it excludes this type of  
4 analysis. But assume there is. Is your position that  
5 independent means an articulable, independent basis? Or  
6 independent means independent in thinking?

7 MR. FERGUSON: I think it has to be - - - and the  
8 former, not the latter, as to the position that you are  
9 taking.

10 JUDGE GARCIA: Independent in basis?

11 MR. FERGUSON: In basis.

12 JUDGE GARCIA: Okay.

13 JUDGE RIVERA: Well, it's on - - - if I'm sorry.  
14 Your red light is on.

15 MR. FERGUSON: Okay.

16 JUDGE RIVERA: If the Chief Judge will permit, it  
17 - - - it does seem that if that's your standard any officer  
18 who really is interested in pretext not genuinely trying to  
19 do their job can easily get around that by simply never  
20 mentioning the law enforcement motivation?

21 MR. FERGUSON: That would be correct, Your Honor.  
22 But that's not what happened here.

23 JUDGE RIVERA: No, no - - -

24 MR. FERGUSON: When - - -

25 JUDGE GARCIA: I understand that. But I'm just

1 saying with respect to the standard it seems to me that  
2 it's a little bit difficult the - - - the way you're trying  
3 to craft this rule if your concern is about pretext. I've  
4 - - - I'm not sure if you - - - if that's what you hope the  
5 rule will achieve, I'm not sure that it does that. That's  
6 what I'm saying.

7 MR. FERGUSON: If the officer - - - if the  
8 officer had not also stated that he believed something  
9 illegal was going on, then this would be clearly just a  
10 community caretaking exception. And if - - -

11 JUDGE RIVERA: Well, if we work - - - if we  
12 recognize as such - - - well let's put that one to the side  
13 for one moment. I mean, the point is we have said these  
14 stops have to be reasonable.

15 MR. FERGUSON: Um-hum.

16 JUDGE RIVERA: When an officer is not wearing  
17 their law enforcement hat that is what the Board says.  
18 Reasonable conduct by an officer.

19 MR. FERGUSON: Right.

20 JUDGE RIVERA: So whether or not a door swinging  
21 open once when he's not speeding and he's not veering off  
22 the road is reasonable. It strikes me as the only question  
23 before us.

24 MR. FERGUSON: I think that we would prevail  
25 under - - - and in the position we have taken in our briefs

1 that we would prevail under either position. And  
2 absolutely believe that this was not a reasonable belief.  
3 That this was a public safety issue.

4 Thank you, Your Honors.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. SIDDIQUI: Good afternoon, Your Honors. May  
7 it please the court. Saad Siddiqui on behalf of Bronx  
8 County District Attorney's Office and the - - - the Office  
9 of Darcel Clark.

10 The appellate term properly found that the stop  
11 of defendant's car was justified based on considerations of  
12 public safety and the safety concern outweighed the  
13 interference of defendant's liberty.

14 JUDGE RIVERA: Okay. So that sounds right that  
15 if there's a public safety concern then an officer should  
16 be act in a manner that's reasonable. Why was it  
17 reasonable here to stop the car?

18 MR. SIDDIQUI: Well, Your Honor - - -

19 JUDGE RIVERA: Based on a door swinging open and  
20 closed?

21 MR. SIDDIQUI: Well, it's - - - it's not as  
22 simple as just a door opening and closing.

23 JUDGE RIVERA: Well, what? I'm sorry. The I  
24 missed the record. What else - - -

25 MR. SIDDIQUI: Well - - -

1 JUDGE RIVERA: - - - was there?

2 MR. SIDDIQUI: The record - - - the record made  
3 it very clear. This was at night. This was 8:35 p.m., May  
4 5th, 2017.

5 JUDGE RIVERA: Yes.

6 MR. SIDDIQUI: Ofc. Haskovic, a five-year veteran  
7 of the NYPD - - -

8 JUDGE RIVERA: All right.

9 MR. SIDDIQUI: - - - was just surveilling in an  
10 unmarked police cruiser.

11 JUDGE RIVERA: Um-hum.

12 MR. SIDDIQUI: Here's what he observed. He  
13 observed the car traveling twenty-five miles an hour. Not  
14 twenty. That was the finding by the appellate term which  
15 has substantial support in the record.

16 JUDGE RIVERA: Which is not excessive; right?

17 MR. SIDDIQUI: No. It's - - -

18 JUDGE RIVERA: It's not above the speed limit?

19 MR. SIDDIQUI: It's not above the speed limit.

20 JUDGE RIVERA: Um-hum.

21 MR. SIDDIQUI: But it's certainly - - -

22 JUDGE RIVERA: So he's complying with the law?

23 MR. SIDDIQUI: He's complying with the law.

24 JUDGE RIVERA: All right.

25 MR. SIDDIQUI: The officer also testified that

1           there was one car in front of defendant's vehicle.  
2           Additionally, that there was traffic on the road at that  
3           time and that in general this is a busy area, a busy  
4           intersection. And the officer testified very clearly that  
5           the car door opened and closed. It was in fact - - - he  
6           testified it abruptly opened and forcefully closed.

7                        CHIEF JUDGE WILSON: And what does - - - what  
8           does abruptly mean there?

9                        MR. SIDDIQUI: Certainly that it - - - it was  
10          unexpected how it - - -

11                      CHIEF JUDGE WILSON: Okay. But that's - - - it's  
12          pretty unexpected that that happens; right?

13                      MR. SIDDIQUI: Yes.

14                      CHIEF JUDGE WILSON: So I'm not sure abruptly  
15          adds anything.

16                      MR. SIDDIQUI: Well, it does go to the - - - Your  
17          Honor, I would submit that it goes to the fact that this  
18          doesn't happen all that often.

19                      CHIEF JUDGE WILSON: Well, and can you tell me  
20          you've never opened a car door in a moving car?

21                      MR. SIDDIQUI: Certainly - - -

22                      CHIEF JUDGE WILSON: Yourself?

23                      MR. SIDDIQUI: - - - Your Honor. But - - -

24                      CHIEF JUDGE WILSON: You never have?

25                      MR. SIDDIQUI: No. I have opened.

1 CHIEF JUDGE WILSON: Okay.

2 MR. SIDDIQUI: But I would say there's a  
3 difference here.

4 CHIEF JUDGE WILSON: Was it abrupt when you did  
5 that?

6 MR. SIDDIQUI: Well, generally when a car is  
7 moving and you try and open a car door - - -

8 CHIEF JUDGE WILSON: All right.

9 MR. SIDDIQUI: - - - to unfasten the - - -

10 CHIEF JUDGE WILSON: Go ahead.

11 MR. SIDDIQUI: - - - seatbelt, you are dealing  
12 with other factors which you can reasonably infer.

13 CHIEF JUDGE WILSON: Have you ever had, like, a  
14 coat belt stuck in a car door? Or a seatbelt stuck in a  
15 car door? You didn't notice it until you were driving and  
16 you open the door and close it and pull the thing in?

17 MR. SIDDIQUI: Yes. But Judge, in that situation  
18 also there's only so far I could open the car door. When  
19 you're moving a car, you are dealing with issues like wind  
20 resistance, friction, so there - - - to the extent that the  
21 car door was going to open it's going to be minimal. Here  
22 in this situation - - -

23 CHIEF JUDGE WILSON: Have you ever seen anybody  
24 in a moving car open the door and throw something out like  
25 litter or something? Or spit out of the side of the door

1 and then close it?

2 MR. SIDDIQUI: Generally, not when the car is  
3 moving at twenty-five miles an hour.

4 CHIEF JUDGE WILSON: Okay.

5 MR. SIDDIQUI: And in this instance what Officer  
6 Haskovic observed was that the car door - - - the car which  
7 was one car length in front of him - - - he's sitting in  
8 the driver's position of the unmarked police cruiser.

9 CHIEF JUDGE WILSON: Um-hum.

10 MR. SIDDIQUI: He sees the front passenger side  
11 door open.

12 CHIEF JUDGE WILSON: Um-hum.

13 MR. SIDDIQUI: And it clearly opened with enough  
14 force and far enough for him to see it in his line of sight  
15 while - - -

16 JUDGE TROUTMAN: Well, what does he - - - does he  
17 see anything going on inside of the car that indicates  
18 distress by someone?

19 MR. SIDDIQUI: No. He does not. He - - - the  
20 testimony is clear he didn't hear anything and he couldn't  
21 peer into the - - -

22 JUDGE TROUTMAN: Does he - - -

23 MR. SIDDIQUI: - - - vehicle?

24 JUDGE TROUTMAN: - - - describe erratic driving  
25 while this door is opening and closing?

1 MR. SIDDIQUI: No. He does not. No. He did not  
2 describe that. That wasn't here.

3 JUDGE TROUTMAN: So it opens and it closes again?

4 MR. SIDDIQUI: Yes.

5 JUDGE TROUTMAN: That's it?

6 MR. SIDDIQUI: But that's enough. Because I - -

7 -

8 JUDGE RIVERA: And when - - - and when he tried  
9 to pull over the - - - the car pulled over? Right?

10 MR. SIDDIQUI: That is correct.

11 JUDGE RIVERA: He didn't in any way try to evade  
12 the officer?

13 MR. SIDDIQUI: Not at all. But he pulled the car  
14 over out of concern for the welfare of the passengers.

15 JUDGE HALLIGAN: Can I - - -

16 CHIEF JUDGE WILSON: Why didn't he then go to the  
17 passenger's side first?

18 MR. SIDDIQUI: Well, he had a partner. His  
19 partner went to the passenger's side, and he went to the  
20 driver's side. And at that moment in time when he  
21 interacted with the defendant, there was the odor of  
22 marijuana. And at that moment, the stop transformed. It  
23 was no longer a community caretaking role. The officer was  
24 acting in his capacity of law enforcement.

25 He was - - - he had probable cause.

1                   JUDGE RIVERA: So how do we - - - how do we  
2 address - - - or perhaps you don't think it's an issue - -  
3 - the pretext concern that counsel raises? Well, it has  
4 also been noted in the case law.

5                   MR. SIDDIQUI: Well, I would go back again to the  
6 standard that this court opined in Robinson. That as long  
7 as there is an objective, reasonable, articulable basis  
8 again the standard has always been one of reasonableness.  
9 And here in this instance we had an officer who was very  
10 candid in what he observed.

11                  JUDGE GARCIA: Counsel, but I think the problem  
12 with using Robinson seems to me to get at the pretext issue  
13 is - - - as I remember Robinson and Wren, and it's you have  
14 a violation. You have a probable cause, let's say, for a  
15 traffic violation. But in your mind, you think it's  
16 something else - - -

17                  MR. SIDDIQUI: Um-hum.

18                  JUDGE GARCIA: - - - right? You think it's some  
19 other criminal activity. And the issue in Wren and  
20 Robinson was if you really have the traffic violation which  
21 gives you probable cause, let's say to pull a person over,  
22 can you in the back of your mind be doing that for another  
23 reason? But there was no question that the stop itself was  
24 lawful. It was. The question was motivation - - - purely  
25 motivation to say can we - - - can I use a violation to

1 investigate a different thing?

2 This is - - - seems to me as somewhat different  
3 because the initial stop itself is not based on any  
4 probable cause. It's based on something else. So we're  
5 giving an exception for something. All right? And  
6 thinking are you using that exception which doesn't require  
7 you to see a crime or have reasonable suspicion of a crime  
8 under one version, but you're using that because you have  
9 less than reasonable suspicion to investigate a crime. So  
10 it's a little bit different of a concern it seems to me  
11 than Robinson and Wren.

12 MR. SIDDIQUI: Your Honor, it is different. But  
13 the similarity, at least in the analysis in Robinson, rests  
14 with the subjective intent of the officer. This court has  
15 always looked to objective standards, objective,  
16 reasonable, articulable facts, not withstanding the fact  
17 that this officer may have had a law enforcement concern he  
18 still had an objective - - -

19 JUDGE GARCIA: The fear is you're getting around  
20 the Fourth Amendment by using something that allows you not  
21 to comply with those strictures and what you're really  
22 doing is doing it for purposes that would implicate the  
23 Fourth Amendment, which is different to me than Wren and  
24 Robinson.

25 MR. SIDDIQUI: But in this case, you had an

1 officer that acted out of a public safety concern.  
2 Specifically, he was acting out of the concern for the  
3 wellbeing of that passenger sitting in the front seat.

4 JUDGE HALLIGAN: Can I - - - can I ask you about  
5 the community caretaking exception you're proposing. So  
6 you reference Livingston at some length; right?

7 MR. SIDDIQUI: Yes.

8 JUDGE HALLIGAN: There's a decision from the U.S.  
9 Supreme Court from a few years ago. I don't think it's  
10 cited in the briefs, and I don't know if you happened to  
11 have read it. It's called Caniglia. And it's a case about  
12 how Cady applies in the context of a home.

13 MR. SIDDIQUI: Um-hum.

14 JUDGE HALLIGAN: And the First Circuit there had  
15 said we're going to invoke the community caretaking  
16 exception. And as I read the Supreme Court's opinion from  
17 a few years ago, it expresses some real skepticism about  
18 the breadth of that exception.

19 MR. SIDDIQUI: And in fact, there's a separate  
20 writing which says there is no overarching such exception.  
21 You might want to look at exigency, but there's not a  
22 community caretaking exception in some broader sense of the  
23 term.

24 I don't know if you happened to have read that  
25 case, but do we need to adopt this distinct exception that

1           you're proposing or can we look at this in terms of  
2           exigency? And if so, where does that lead us?

3                       MR. SIDDIQUI: Well, I would say that this  
4           exception specific to the community care - - - caretaking  
5           function of the police has been adopted in other  
6           jurisdictions that the exception that has been created in  
7           other jurisdictions because both my adversary - - -

8                       JUDGE HALLIGAN: Although I'm not sure that those  
9           jurisdictions - - - so Livingston, for example, is from  
10          2017.

11                      MR. SIDDIQUI: Yes.

12                      JUDGE HALLIGAN: And this decision from the U.S.  
13          Supreme Court is more recent. It's from 2021. So I'm not  
14          sure that the jurisdictions that have adopted the exception  
15          have had a chance to think about how the Supreme Court's  
16          articulation of those Fourth Amendment principles might map  
17          onto the community caretaking exception.

18                      So it - - - if there is some question that the  
19          Supreme Court has raised about that, where - - - where  
20          would we be if we thought about this in terms of exigency?

21                      MR. SIDDIQUI: Well, we would be - - - and in the  
22          rule that we are proposing it specifically deals with the  
23          fact that the intrusion of the police in observing a - - -  
24          an objectively reasonable, articulable public safety  
25          concern is tailored to rendering assistance or mitigating

1           that - - -

2                         JUDGE HALLIGAN: But it doesn't need to be urgent  
3 in any way? Exigency, I think, usually conveys some sense  
4 of urgency.

5                         MR. SIDDIQUI: Well, well - - - certainly. But  
6 you should be able to do it at that time. And that's what  
7 happened here. You saw the car door open and close and  
8 Officer Haskovic effectuated the traffic stop.

9                         CHIEF JUDGE WILSON: And why not - - - if you  
10 were concerned, why not just follow the car for a bit? And  
11 to the - - - some of the earlier questions, what happens to  
12 the - - - what happens if it happens again?

13                         MR. SIDDIQUI: Well, in this instance - - -

14                         CHIEF JUDGE WILSON: And stop is intrusive.  
15 Would you agree with that?

16                         MR. SIDDIQUI: Yes. But this - - -

17                         CHIEF JUDGE WILSON: Okay.

18                         MR. SIDDIQUI: - - - but the intrusion was  
19 minimal. Minimal - - - it was - - - it was - - -

20                         CHIEF JUDGE WILSON: Stopping the car is a  
21 minimal intrusion?

22                         MR. SIDDIQUI: In - - - in relation to what the  
23 officer was trying to do. He was trying to ascertain  
24 whether or not the passenger - - - the front passenger  
25 needed assistance.

1 CHIEF JUDGE WILSON: Right. And so I guess my  
2 question is couldn't you do that in a less intrusive way by  
3 following the car for a bit?

4 MR. SIDDIQUI: Well, he testified he also  
5 couldn't see inside the car.

6 CHIEF JUDGE WILSON: He couldn't see if the door  
7 opened and closed again; right?

8 MR. SIDDIQUI: Yes. But he couldn't - - - he  
9 couldn't know - - - he - - -

10 JUDGE RIVERA: Well, if the cars veered off or if  
11 sounds emanated from the car?

12 MR. SIDDIQUI: Well, he's testified he didn't  
13 hear anything.

14 CHIEF JUDGE WILSON: But that's what I think is  
15 being suggested. Perhaps a little bit more time would have  
16 gotten the officer past the line of maybe everything's  
17 okay, maybe it's not - - - this looks like I should really  
18 stop this car.

19 MR. SIDDIQUI: But when we're talking about  
20 public safety, a few seconds make all the difference in the  
21 world.

22 JUDGE TROUTMAN: But what was it about the  
23 opening and closing at twenty-five miles an hour - - - that  
24 one opening and closing that made it such that that car  
25 needed to be immediately pulled over instead of doing as my

1 colleagues are asking?

2 MR. SIDDIQUI: Well, in this instance the officer  
3 testified. It was the fact that it was as - - - it was  
4 just out of the ordinary. It's not something you see every  
5 day.

6 JUDGE RIVERA: If we disagree with that, that  
7 that is not an objectively reasonable conclusion to come to  
8 there's already been suggestions and you've admitted  
9 yourself or you've conceded that one might open the door  
10 for a - - - of a moving car moving at less than the speed  
11 limit in - - - and a city speed limit - - - I'm not talking  
12 about the highway at 65 miles an hour. Right? The - - -  
13 that might have objectively, reasonable, innocent reasons  
14 why you would do that perhaps to actually ensure the safety  
15 of the rider?

16 If your seatbelt is stuck you want to put that  
17 seatbelt on. Or if the door is unlocked you want to make  
18 sure that door is locked. So there may be reasons to open  
19 and close a door that actually ensure safety rather than  
20 put someone at risk.

21 MR. SIDDIQUI: But the - - - what was relevant  
22 here also was the fact that - - -

23 JUDGE RIVERA: All I'm saying is if we disagree -  
24 - -

25 MR. SIDDIQUI: Um-hum.

1 JUDGE RIVERA: - - - and say that it's not  
2 reasonable objectionable - - - objectively reasonable.  
3 Excuse me. Based on the facts here and what the - - - the  
4 officer articulated as the reasons for the stop, for - - -  
5 for us to say that that was reasonable in those  
6 circumstances and in pursuance of the public safety do you  
7 lose? I mean, that - - - aren't we done - - -

8 MR. SIDDIQUI: Well - - -

9 JUDGE RIVERA: - - - if we disagree at that  
10 point?

11 MR. SIDDIQUI: But we would still ask that the  
12 court adopt our analysis in the framework as the rule of  
13 law with respect to how to approach this.

14 JUDGE RIVERA: What I'm saying - - - doesn't it  
15 all turn on the - - - on the conclusion of whether or not  
16 it's objectively reasonable?

17 MR. SIDDIQUI: Yes. I would - - -

18 JUDGE RIVERA: That - - - that - - -

19 MR. SIDDIQUI: Yes. I would - - -

20 JUDGE RIVERA: - - - that opening and closing  
21 really does raise a concern about public safety?

22 MR. SIDDIQUI: But - - -

23 JUDGE RIVERA: Just what you saw in that moment?

24 MR. SIDDIQUI: But as I indicated, Your Honor, it  
25 - - - it goes just simply beyond the mere opening and

1 closing. There were other factors. There were other  
2 observations.

3 JUDGE CANNATARO: That's what you started your  
4 argument with, Counsel. You mentioned that it was 8:30 at  
5 night. That it was a busy street. I think you said  
6 something about going twenty-five miles an hour. And I was  
7 very curious so I'm glad you raised it again. Where was  
8 that all going? Because other than a door opening on a  
9 car, none of that strikes me as exigent or amenable to a  
10 community caretaking purpose. So what was your point?

11 MR. SIDDIQUI: He's - - -

12 JUDGE RIVERA: And the officer didn't give those  
13 reasons.

14 MR. SIDDIQUI: Well, he did. He test - - -

15 JUDGE RIVERA: I - - - I thought he said it's  
16 because the door opened and closed? And that was unusual?

17 MR. SIDDIQUI: But he also testified - - -

18 JUDGE RIVERA: He didn't say it was because it  
19 was 8:30 at night and May 17th, when I think it's still  
20 daylight?

21 MR. SIDDIQUI: At 8:35 at night on May 17th it  
22 was, in fact, dark. And he testified to that. The  
23 testimony was clear that the sun had already set.

24 JUDGE RIVERA: And did he say that's why I  
25 stopped the?

1 MR. SIDDIQUI: Well, he - - -

2 JUDGE RIVERA: The combination of those things?

3 MR. SIDDIQUI: He spoke to the totality of the  
4 entire situation.

5 JUDGE TROUTMAN: Okay. When you say that was he  
6 just merely saying it was on a specific date at a specific  
7 time as opposed to that forming the basis of the action?

8 MR. SIDDIQUI: Your Honor, what he specifically  
9 said was that the car was traveling at twenty-five miles an  
10 hour. It opened and closed.

11 JUDGE TROUTMAN: Yes. That's what - - -

12 MR. SIDDIQUI: Yes.

13 JUDGE TROUTMAN: - - - what he said.

14 MR. SIDDIQUI: And he also said there was traffic  
15 on the road, that there was traffic - - - that that was  
16 elicited during the questioning.

17 JUDGE TROUTMAN: I'm clear.

18 MR. SIDDIQUI: Um-hum.

19 JUDGE TROUTMAN: But it's not that which formed  
20 the basis. He didn't say - - - are you saying that he said  
21 because there was traffic on the street that there was a  
22 concern about an accident or something happening because  
23 that car is opening? I'm not seeing the connection between  
24 setting the stage or the background of here's what's going  
25 on in addition to the car driving.

1                   What I'm hearing from you is he gave a specific  
2                   date, he gave a specific time, abut as to the actions that  
3                   led to the car being pulled over it was because it suddenly  
4                   opened and it closed, so I pulled them over.

5                   MR. SIDDIQUI: But it's also looking at it in the  
6                   context of the totality of the - - -

7                   JUDGE TROUTMAN: That's what you're asking us to  
8                   do?

9                   MR. SIDDIQUI: Exactly. That's what I'm asking.

10                  JUDGE TROUTMAN: Okay.

11                  MR. SIDDIQUI: And that's what - - -

12                  JUDGE RIVERA: If we - - - if we read the record  
13                  to not indicate that he based in on the totality of the  
14                  circumstances your point is it's only about the opening and  
15                  closing? Your argument is still that just opening and  
16                  closing the door was enough?

17                  MR. SIDDIQUI: Based on his observations we  
18                  submit that that is enough.

19                  JUDGE RIVERA: And if we disagree with you - - -

20                  MR. SIDDIQUI: We would - - -

21                  JUDGE RIVERA: - - - that it's got to be  
22                  reversed, you agree?

23                  MR. SIDDIQUI: Yes.

24                  JUDGE RIVERA: Okay.

25                  MR. SIDDIQUI: But we would still ask that the

1 court adopt our analysis. And one - - - one point that my  
2 adversary - - -

3 JUDGE SINGAS: What do you mean by that? That we  
4 would adopt an exception based on public safety or  
5 community caretaking and then once applied?

6 MR. SIDDIQUI: Once applied - - -

7 JUDGE SINGAS: They would either affirm depending  
8 on what facts we think are elicited?

9 MR. SIDDIQUI: And - - - and that that exception  
10 - - -

11 JUDGE SINGAS: Is that what you're asking?

12 MR. SIDDIQUI: Yes, Your Honor. And that that  
13 exception would be based on objectively, articulable,  
14 reasonable public safety concerns. That the intrusion is  
15 tailored to rendering assistance or mitigating the peril  
16 even if the police had a subjective law enforcement  
17 concern. And that once the assistance of course had been  
18 provided or the peril mitigated that the traditional Fourth  
19 Amendment analysis would be - - - it would be evaluated  
20 under the traditional Fourth Amendment analysis.

21 I would submit that the rule that the - - - that  
22 my opponent, that the defendant is asking for is  
23 unworkable. Respectfully, police work is multifaceted and  
24 cannot be cabined into discrete functions. Police officers  
25 have both a law enforcement and a community caretaking

1 role. And you can't just separate the two so easily. They  
2 can have a calm, committed concern of law enforcement. And  
3 - - - and also a public safety concern.

4 The fact of the matter is the officer may have  
5 testified that yes, he was concerned about the illegal  
6 activity - - -

7 CHIEF JUDGE WILSON: Well, do you think that  
8 there - - - there's a - - - a car door opening brief - - -  
9 you know, very briefly and closing, moving at twenty-five  
10 miles an hour is a - - - has anything to do with the  
11 possibility of criminality?

12 MR. SIDDIQUI: It could certainly suggest if you  
13 were talking about the passenger door that you have a - - -

14 CHIEF JUDGE WILSON: Um-hum.

15 MR. SIDDIQUI: - - - front passenger who's trying  
16 to get out of the car. And those are the reasons that he  
17 even articulated in his testimony. What if someone was  
18 being kidnapped? What if someone was trying to leave? He  
19 wanted to find out what was going on. That's a legitimate  
20 safety concern. And to the extent that - - -

21 CHIEF JUDGE WILSON: I wasn't asking about  
22 safety. I was asking about criminality.

23 MR. SIDDIQUI: But with respect to criminality,  
24 it go - - - it's - - - it goes hand in hand - - -

25 CHIEF JUDGE WILSON: Sufficient to stop the car?

1 MR. SIDDIQUI: Um-hum.

2 CHIEF JUDGE WILSON: Sufficient to stop the car?

3 MR. SIDDIQUI: Certainly if he's got a concern  
4 that something - - - that someone is in distress.

5 CHIEF JUDGE WILSON: No. Okay. I guess, I'm - -  
6 - let me try it a different way.

7 MR. SIDDIQUI: Yes, sir.

8 CHIEF JUDGE WILSON: To stop the car you would  
9 need to have probable cause; yes?

10 MR. SIDDIQUI: If we're talking about a criminal  
11 justification.

12 CHIEF JUDGE WILSON: We're talking about criminal  
13 about - - - let's say he said - - - let's say his testimony  
14 was I had no community caretaking function. I thought  
15 there was criminality going on. And the basis for that is  
16 the car door opened and shut. Is that sufficient legally?

17 MR. SIDDIQUI: For probable cause? Yeah.

18 CHIEF JUDGE WILSON: Okay.

19 MR. SIDDIQUI: If - - - if we're talking about  
20 the front passenger side door.

21 CHIEF JUDGE WILSON: Front passenger side door?

22 MR. SIDDIQUI: Yeah. There's no probable cause.  
23 Then we would concede that. If there are no further  
24 questions, Your Honors, I would rely on our brief. And we  
25 would again ask that the court affirm the appellate term's

1 decision. And did - - - and the determination and hold  
2 that Officer Haskovic's stop of the defendant's vehicle was  
3 proper - - - was a proper exercise of the police's  
4 community caretaking duties. Thank you.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. FERGUSON: Just a couple of points, Your  
7 Honors. So going back to Judge Troutman indicating there  
8 is a difference between Officer Haskovic's testimony at the  
9 original suppression hearing and at the reopened  
10 suppression hearing. At the reopened suppression hearing  
11 he modifies his testimony and testifies that in point of  
12 fact the car was only traveling at twenty miles per hour,  
13 not twenty-five miles per hour when the door opened and  
14 closed.

15 And going back to Judge Wilson, that is the whole  
16 reason. That's it. The only thing that he articulated was  
17 the opening and closing of the car door. It was the only  
18 predicate for believing that there was a public safety  
19 issue.

20 And as to Judge Halligan, the issue in Caniglia  
21 was whether the U.S. Supreme Court was going to extend  
22 community caretaking exception in traffic stops to a home  
23 and the determination of the U.S. Supreme Court was that it  
24 would not have extended to a home. But it did again  
25 reaffirm that there is a community caretaking exception for

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a traffic situation.

JUDGE HALLIGAN: Well, at least for, I think, either an impounded vehicle or a disabled vehicle in the side of the road. Do you read it to go further than that?

MR. FERGUSON: I think it - - - I think you can read it to go further than that because they make it - - - I believe it's Justice Thomas who wrote it, was that - - - that they were not saying anything as it related to whether it eviscerated was - - - how to deal with traffic situations and stopped vehicles. So I think there was an idea that there was a community caretaking exception for traffic stops.

So we would ask Your Honors to reverse it on the basis that there was no reasonable basis to believe there was only any public safety issue in this particular case. Thank you, Your Honors.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)

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

I, Saira Khan, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of New York v. Jason Brown, No. 51 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

*Saira Khan*

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