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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF NEW YORK,
Respondent,

-against-

KEVIN THOMAS,
Appellant.

NO. 52

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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Saira Khan
Official Court Transcriber

1 CHIEF JUDGE WILSON: The next case on the
2 calendar is People v. Thomas.

3 MR. CASEY: May it please the court. Good
4 afternoon, Your Honors, Mr. Bloom. My name is John Casey.
5 I represent Kevin Thomas.

6 What I'm asking the court in this argument is to
7 analyze this case using the De Bour factors for this police
8 encounter. And I believe when the court reviews the
9 bodycam video and the - - - and the testimony, the court
10 will find that there was never at any point any reasonable
11 suspicion to detain Mr. Thomas during that forty minutes.

12 CHIEF JUDGE WILSON: Mr. Casey, let me just
13 interrupt you for a second.

14 MR. CASEY: Yes?

15 CHIEF JUDGE WILSON: Do you wish to reserve any
16 time for rebuttal?

17 MR. CASEY: Oh. I'm sorry. One minute, Your
18 Honor. Thank you.

19 CHIEF JUDGE WILSON: Thank you.

20 MR. CASEY: And I think it's clear also from the
21 video and the testimony that the reason for the traffic
22 stop, the running their - - - the stop sign ended very
23 early, in fact it was over about - - -

24 JUDGE TROUTMAN: So here, the supreme court - - -
25 the suppression court and the appellate division applied

1 founded suspicion rather than reasonable suspicion. Is
2 that the right standard?

3 MR. CASEY: I think it was the right standard in
4 analyzing whether they could question - - - ask pointed
5 questions to Mr. Thomas. We've - - -

6 JUDGE TROUTMAN: So you would disagree that - - -
7 that reasonable suspicion was perhaps the proper standard
8 instead?

9 MR. CASEY: That it - - -

10 JUDGE TROUTMAN: And that that wasn't used here?

11 MR. CASEY: It's - - - that's true. I believe
12 one of the Court of Appeals decisions - - - but - - -

13 JUDGE CANNATARO: Well, Counsel, to add onto that
14 question, you also argue in your brief that there was an
15 absence of a founded suspicion to search the car or to
16 prolong the stop. So is this a change from what you were
17 arguing in your brief?

18 MR. CASEY: I think it - - - I - - - it is
19 somewhat of a change. It's not - - - if I can explain a
20 little bit as to how this developed. When they can
21 question somebody with - - - they can question the
22 defendant if they have founded suspicion that criminal
23 activities is ongoing.

24 The officers did that here because he started
25 lying to them about where he had been. And they knew where

1 he had been because they had a fellow officer tell them.
2 So they used that to ask him pointed questions. What we
3 had argued below and had argued all along was that once the
4 traffic stop justification ended which was before that they
5 couldn't even get - - - they couldn't even start asking
6 about the parole issues and where he was coming from
7 because all that came after the stop sign issue was
8 resolved and the - - -

9 JUDGE RIVERA: Well, let me ask you this. The -
10 - - so the officer gets a communication that the defendant
11 is out of state, out of the county. The officer observes
12 him come off the ramp.

13 MR. CASEY: Right.

14 JUDGE RIVERA: Put aside anything that the
15 defendant actually said. Assuming for one moment that's
16 enough to - - - for the officer to suspect that there is a
17 violation of the parole that he's gone outside - - - the
18 inference that he's gone outside of the county, the earlier
19 condition of his parole. Could he have called the parole
20 officer at that point and just detained the defendant while
21 he's waiting for the parole officer to arrive?

22 MR. CASEY: That's an interesting question. I
23 think he could have called the parole officer.

24 JUDGE RIVERA: Yeah.

25 MR. CASEY: And asked him - - - and confirmed - - -

1 - and this is an important point - - - confirmed that there
2 was an actual parole violation. Because he - - - at that
3 point he could have had - - -

4 JUDGE RIVERA: Um-hum.

5 MR. CASEY: - - - permission. But they didn't do
6 that.

7 JUDGE RIVERA: No?

8 MR. CASEY: Whether he could do that, that's - -
9 - that's an interesting question. It didn't happen here
10 because they didn't call the parole officer in fact. And -
11 - -

12 JUDGE RIVERA: Well, they did.

13 MR. CASEY: - - - maybe it's - - -

14 JUDGE RIVERA: No. He did.

15 MR. CASEY: Later. Correct, I - - -

16 JUDGE RIVERA: Later.

17 MR. CASEY: - - - they did later. But at - - -

18 JUDGE RIVERA: Later.

19 MR. CASEY: - - - they - - -

20 JUDGE RIVERA: Well, I guess I have a question
21 about that.

22 MR. CASEY: Yeah.

23 JUDGE RIVERA: Let's assume that everybody agrees
24 that the stop - - - having gone through the stop sign.
25 Excuse me. Potentially having gone through the stop sign

1 was - - - was valid?

2 MR. CASEY: Correct.

3 JUDGE RIVERA: Right? No one - - - no one's
4 objecting to that. And there was no reason not to ask him,
5 if I can use a double negative, for his license,
6 registration, all of that. No one's disputing that was
7 improper. Okay?

8 MR. CASEY: Yeah. It pertains to the stop.

9 JUDGE RIVERA: All right. I don't think anyone's
10 disputing that - - - well, maybe you are. I'll ask. Are
11 you disputing that he couldn't ask for consent to search
12 the car?

13 MR. CASEY: That's - - - we're disputing - - -

14 JUDGE RIVERA: Could he ask?

15 MR. CASEY: Yeah. He could not. Because the
16 justification for the stop had ended by the time he started
17 to question him to develop - - - if he developed a founded
18 suspicion, it was after the justification for the stop.
19 And the appellate divisions and this court are all clear
20 that once the justification for the stop is concluded you
21 can't after the fact develop reasons to continue the - - -
22 the detention.

23 JUDGE CANNATARO: So is your argument that the -
24 - - at the point that the time that justified the stop
25 ended when - - - when there was no longer any purpose for

1 the - - - for the stop based on a violation of the VTL,
2 there was neither a founded suspicion that would justify a
3 request to search or even - - - or - - - or more - - -
4 moreover a reasonable suspicion that would justify any - -
5 - even more intrusive.

6 MR. CASEY: Correct. And now, if this court
7 decides that well because the parole was - - - was in - - -
8 was on - - - ongoing and you find that it was okay for the
9 officer to just ask him hey, where were you coming from
10 even though the traffic stop was over, at best the people
11 may have developed a founded suspicion. And I think that's
12 what they argue, which would allow them to ask him under
13 the Court of Appeals to search the vehicle, and even to - -
14 - to get a dog to sniff the vehicle.

15 However, the importance distinction here that I
16 believe - - - the differences between the Court of Appeals
17 and the Appellate Divisions is the Court of Appeals has
18 unequivocally stated that that to detain the defendant, not
19 just to ask him questions, and not just to get a dog to
20 come sniff the car while the stop is still valid, but to
21 detain him there needs to be reasonable suspicion and I
22 would submit that when the court looks at this, Mr. Thomas
23 was detained the entire time.

24 JUDGE CANNATARO: Is the calculus modified in any
25 way by the fact that they know that they're dealing with a

1 parolee at the time? Does that count to enhance their
2 suspicion or does it change anything at all? And I'll - -
3 - I'll ask you part B is that question. Is - - - they're
4 asking him some questions. I don't know exactly where in
5 the transaction it is. But they're asking him some
6 questions that they are reasonably sure that he's giving
7 false answers to. How does that factor in here?

8 MR. CASEY: Well, first all of that again came
9 after the fact. So they didn't have - - -

10 JUDGE CANNATARO: So because they didn't ask any
11 of those questions by the time the purpose for the traffic
12 stop had expired - - -

13 JUDGE HALLIGAN: Don't they - - -

14 JUDGE CANNATARO: - - - it's all gone?

15 MR. CASEY: Correct.

16 JUDGE HALLIGAN: Don't they know because of the
17 call before the traffic stop that they have reason to
18 believe he is violating parole? Or am I misunderstanding
19 the record?

20 MR. CASEY: They - - - they did have reason based
21 upon the call from their fellow - - -

22 JUDGE HALLIGAN: Right.

23 MR. CASEY: - - - officer that he was outside the
24 jurisdiction. They knew he was on parole. So they had
25 suspicion that maybe he might be in violation of his

1 parole, which at that point they never - - - they never
2 confirmed until later - - -

3 JUDGE HALLIGAN: Right.

4 MR. CASEY: - - - with his parole.

5 JUDGE HALLIGAN: So what if anything flows from
6 that suspicion that he's violating his parole?

7 MR. CASEY: I haven't found - - - I didn't see -
8 - - never - - - have not seen the case from the Court of
9 Appeals that it said a reasonable suspicion or founded
10 suspicion that he's violated parole allows the police to
11 detain an individual.

12 JUDGE GARCIA: But Counsel, to - - - to follow up
13 on that, though, we have Huntley. Right? And to me this
14 is the lens of Huntley this case. So in Huntley we have a
15 search by a police officer and a search by the parole
16 officer - - - different standards. Right? We lay that
17 out.

18 The cases you cite, they - - - some of them they
19 don't involve parolees which I think changes the analysis
20 somewhat here. So to Judge Halligan's point, when they
21 pull over the defendant, they know he's a parolee and they
22 have this information that he may have violated. And that
23 informs this interaction from that point forward under the
24 Huntley analysis.

25 So whatever standards they are - - - reasonable

1 suspicion, probable cause - - - whatever the standards are
2 that we've laid out for police interactions are now
3 affected by the parolee status. That's what we said in
4 Huntley and that's what we said in McMillan.

5 Later on and we haven't talked about it much - -
6 - by the time you get to the parolee search of - - - the
7 parole officer's search of the car. Different standard.
8 Right? Different standard under Huntley. But this part,
9 which we've been going back and forth at I would - - - I
10 would like to get your thoughts on how does the
11 McMillan-Huntley - - - it's always relevant that you're
12 dealing with a parolee even when the requirement is
13 probable cause with McMillan and Huntley.

14 How does that affect a Rodriguez analysis? The
15 reasonable cause analysis? How does that status affect how
16 we should view that?

17 MR. CASEY: I think here, it - - - it's all - - -
18 it is always relevant. But here even with the information
19 that the police officers had they only had a level of
20 suspicion that he was in violation of his parole. Now,
21 what could - - - if it was just that, could they hold him
22 there and say we're going to hold you here and call your
23 parole officer, and see what he - - - tell him that we've
24 got you and see if there's a violation of parole.

25 CHIEF JUDGE WILSON: That's an important

1 question, though. I think Judge Rivera asked before and I
2 didn't really - - - I wasn't sure we got an answer.

3 MR. CASEY: They - - - what happened is - - - is
4 by the time they did that they had detained him.

5 CHIEF JUDGE WILSON: Yeah. No, look - - - let's
6 deal with this hypothetically. Suppose he hadn't run the
7 traffic stop at all - - - or the traffic - - - the stop
8 sign; right? So they have the information they have. And
9 let's - - - let's even put aside the whole - - - the
10 question of whether they could stop his car. Let's suppose
11 all they do is they follow them to his home, he parks his
12 car in his driveway, he gets out. At that point, can they
13 ask him questions?

14 MR. CASEY: Yeah. They have an objective reason
15 - - -

16 CHIEF JUDGE WILSON: So at that point - - -

17 MR. CASEY: - - - at that point to ask - - -

18 CHIEF JUDGE WILSON: - - - can they - - -

19 MR. CASEY: - - - him questions.

20 CHIEF JUDGE WILSON: - - - can they detain him to
21 wait for the parole officer to come?

22 MR. CASEY: No.

23 CHIEF JUDGE WILSON: That's the hard question.

24 MR. CASEY: I don't - - - I don't believe they
25 can. I believe at that point he could say to them I'm not

1 answering any of your questions. And he could go inside.
2 If they tried to detain him, I - - - I think it would be
3 improper at that point. I think that they would have every
4 right to call his parole officer and say we've got your guy
5 here. He just went in the house.

6 Or they could - - - if he drove away they could -
7 - - I think they could - - - they could follow him. Again,
8 none of this happened though.

9 JUDGE RIVERA: So they couldn't detain him even
10 though, let's assume for purposes of this question, their
11 suspicions are that his parole violation is having left the
12 county in his car?

13 MR. CASEY: Right.

14 JUDGE RIVERA: And fear that that might be
15 replicated? Maybe he'll abscond because the violation
16 might lead to his being brought back into custody; right?

17 MR. CASEY: Right. So let's assume that they - -
18 - it's was - - - go - - - would be completely proper for
19 them to call at that time and say I'm going to detain him
20 until you get here and then the parole officer comes down.
21 Maybe if that - - - if the court were to find that was
22 fine, at that point the parole officer comes. All of this
23 - - - this questioning and the detention, and them holding
24 him - - - the parole officer's going to get there and then
25 the parole officer can do his own investigation.

1 JUDGE TROUTMAN: So could they - - -

2 MR. CASEY: Whether that would have to the - - -

3 JUDGE TROUTMAN: Could they hold - - -

4 MR. CASEY: - - - car search.

5 JUDGE TROUTMAN: - - - him without a parole
6 violation warrant? Just on a suspicion? Or are you saying
7 the oral communication, saying yes, if you found him
8 outside of - - - it is an actual violation. Is that oral
9 communication enough?

10 MR. CASEY: I - - - I think then it would go to
11 the reasonable as how long can they stay with him and hold
12 him until the - - - the parole officer gets here. And - -
13 -

14 JUDGE SINGAS: The parole officer could have
15 arrested; correct? If he was on-scene and he thought that
16 they violated his conditions of parole?

17 MR. CASEY: I - - - I believe - - - I believe so.

18 JUDGE RIVERA: What about what if when they
19 called - - - what if when he called the parole officer - -
20 -

21 MR. CASEY: Yeah.

22 JUDGE RIVERA: - - - and the parole officer said
23 hold them; I'm on my way. Don't let them leave?

24 MR. CASEY: Well, we would have a different case
25 then.

1 JUDGE RIVERA: Yeah, I know. That's the point.
2 That is the point of the hypothetical.

3 MR. CASEY: But - - -

4 JUDGE TROUTMAN: But we do have - - -

5 MR. CASEY: I think then they - - - they could at
6 least say, well - - - well - - - our basis for holding him
7 was because the parole officer confirmed for us he was in
8 violation of his parole. And - - -

9 JUDGE HALLIGAN: So is it your view - - - I - - -
10 I'm still not sure I understand the answer to the Chief's
11 prior question. If he has pulled up in front of a house
12 and because of the prior conversation the officer has
13 reason to believe that he is or has violated his parole,
14 and he's going to get in the car and drive off, can they
15 hold him while they reach out to his parole officer and ask
16 what the parole officer - - - how the parole officer would
17 like them to proceed? Or are they required to let him
18 drive off and relegate it to simply following him?

19 MR. CASEY: I don't know the answer to that
20 question. I would just say here - - -

21 JUDGE HALLIGAN: But isn't that - - -

22 MR. CASEY: - - - at least - - -

23 JUDGE HALLIGAN: - - - essentially - - -

24 MR. CASEY: I'm sorry to interrupt, Judge.

25 JUDGE HALLIGAN: No. Go ahead.

1 MR. CASEY: The police were not - - - the police
2 were holding him to try to search his car. And they
3 weren't holding him there necessarily for a - - - a parole
4 violation.

5 JUDGE HALLIGAN: And if we thought that they were
6 holding him for a parole violation initially with the
7 initial questions, then is your answer to that that - - -
8 that it's unclear to you whether they had the authority to
9 do that?

10 MR. CASEY: Well, I - - - I think the people's
11 position is that this escalated to the point where they
12 could request to search the car and that then at some point
13 it became - - - I believe they're saying reasonable
14 suspicion.

15 JUDGE HALLIGAN: I took it that your position - -
16 - I'm sorry.

17 I realize the red light is on. Can I just
18 quickly - - -

19 CHIEF JUDGE WILSON: Yes. Yes.

20 JUDGE HALLIGAN: - - - wrap up?

21 I thought your position was that - - - that once
22 the licensed check came back that there was no basis to ask
23 any further questions? Is that - - -

24 MR. CASEY: That is our - - -

25 JUDGE HALLIGAN: - - - correct?

1 MR. CASEY: - - - position.

2 JUDGE HALLIGAN: Okay. And so my question is if
3 the prior communication gave between the two officers gave
4 the officer who stopped your client reason to believe that
5 he had violated his parole, is it your position that they
6 could not hold him not to search the car but to - - - to
7 ask the parole officer how they might want to proceed? Or
8 were they required notwithstanding the basis to think he
9 might be violating parole to let him drive off?

10 MR. CASEY: I think they would have to - - - I
11 understand now. They would have to call the parole
12 officer. And I don't believe - - -

13 JUDGE HALLIGAN: Can they ask - - -

14 MR. CASEY: I don't believe they could hold him.

15 JUDGE HALLIGAN: Okay.

16 MR. CASEY: I don't believe they could.

17 JUDGE HALLIGAN: So - - - so once the license
18 check is clean, they can't hold him while they call the
19 parole officer. That's your position?

20 MR. CASEY: Correct.

21 JUDGE HALLIGAN: Okay. Thank you.

22 CHIEF JUDGE WILSON: Let me ask you one more
23 variation. Same - - - exactly the same except instead of
24 holding him they simply block the driveway. Can they do
25 that?

1 MR. CASEY: I believe that would be a - - - that
2 would be a detention of him in some sense.

3 CHIEF JUDGE WILSON: Even if he could walk off to
4 wherever? Or call an Uber?

5 JUDGE CANNATARO: Can I just ask one more
6 variation? What do they call the parole officer just to
7 ask him to get a violation warrant? What - - - you know,
8 we - - - we found this guy. We think he was violating
9 parole because he - - - it was after hours; right? He was
10 past curfew. So that in itself. Could they hold him long
11 enough to make that call?

12 MR. CASEY: I think it would have had to have
13 been done in the context of the stop for the - - - rolling
14 through the stop sign. And they would have had to question
15 him about where he was coming from and about his parole
16 during then. And then say well, let's just call your
17 parole officer now to see if you - - - if you did have
18 permission. And that would be a different situation. And
19 that might allow - - - that might justify the limited
20 detention from the initial stop to continue for that part
21 of time.

22 But once they - - - that was expired, I believe
23 they've got to just - - - they could keep an eye of them.
24 They could - - - they could - - - I guess they could wait
25 right down the street. You know, they could wait down the

1 street. They could call. But I don't think they can hold
2 him and detain him at the scene and make him - - - him not
3 leave and go in his house or even drive away. They had
4 plenty of opportunity to do that for an hour before they
5 even stopped him because they had noticed that he was
6 possibly in violation of his parole.

7 So I just don't think they should be given the
8 benefit now of doing something that they never - - - of
9 they didn't - - - they didn't do in the first place because
10 they weren't really interested.

11 JUDGE RIVERA: So the officer has gotten
12 information from another officer? Again, getting back to
13 the hypothetical. The - - - it appears that at least it's
14 a reasonable inference that he may have violated a parole
15 condition of not leaving the county.

16 MR. CASEY: Right.

17 JUDGE RIVERA: All right. And the other officer
18 - - - and I - - - and I think there's a suspicion about
19 drugs too. But let's just stay with this one. Right?
20 Tells him to keep an eye on him. And that's what the
21 officer is doing. He watches him get off of the ramp. He
22 follows him. In the course of this he sees the violation
23 of going through the stop sign.

24 Well, I don't think that vitiates the other
25 suspicions they had, the other reason he was observing the

1 defendant. He's resolving one but it doesn't in any way
2 vitiate the other suspicion; right?

3 MR. CASEY: Well, right. It doesn't.

4 JUDGE RIVERA: You have the basis what you
5 observe - - - and that's what - - - what do you - - -

6 MR. CASEY: What the police can do - - -

7 JUDGE RIVERA: If you hadn't got - - -

8 MR. CASEY: - - - with that suspicion is call
9 parole officer.

10 JUDGE RIVERA: I don't remember if we asked this
11 one. If he had gone through the stop sign but the
12 suspected violation, could he go up to him and talk to him
13 at all?

14 MR. CASEY: Oh, sure. They - - - they could
15 approach him.

16 JUDGE RIVERA: Um-hum.

17 MR. CASEY: They can't detain him. If he says to
18 them I don't want to answer questions, even if he lies to
19 them - - - okay. Well, they can call his parole officer
20 and they can sit there until the parole officer comes down.
21 And then the parole officer can take over.

22 We don't know. The - - - I don't know what - - -
23 there doesn't appear to be a standard articulated from this
24 court as to what are the - - - what the police can do with
25 a parole violation, a suspected parole violation when

1 there's not a parole warrant issues.

2 JUDGE RIVERA: Um-hum.

3 MR. CASEY: And I would suggest that the Board
4 does not allow them to detain him and in this case that's -
5 - - that's why the drugs should be suppressed. Because the
6 ultimate search came from that unlawful detention. Thank
7 you.

8 CHIEF JUDGE WILSON: Thank you.

9 JUDGE RIVERA: Um-hum.

10 MR. BLOOM: Good afternoon. Nathan Bloom for the
11 Chemung County DA's office. May it please the court.
12 Faced with a series of important questions about Mr.
13 Thomas' behavior, Ofc. Linehan did his job as a police
14 officer by seeking answers to those questions in a way that
15 was reasonable and constitutional. Parole Officer
16 Pirozzolo - - -

17 JUDGE SINGAS: Can I ask you, if we find that the
18 detention extended too long or was unlawful does it
19 necessarily flow that the search by the parole officer that
20 recovered illegal substances was invalid?

21 MR. BLOOM: No. I think that would go to our
22 secondary argument that at a minimum, they had probable
23 cause of a parole violation which constitutionally would
24 give them grounds to in fact arrest him. So certainly to
25 detain him. So anything that would flow from that - - -

1 JUDGE SINGAS: Well, they couldn't arrest him;
2 right? They had to - - - they had to wait for their own
3 parole - - - his parole officer could arrest him. But I
4 believe the police would have to get a warrant to make that
5 - - -

6 MR. BLOOM: Under New York State statutory law.
7 Constitutionally, they could arrest him. And this based on
8 - - - on - - - I cite the cases of Diallo from the Second
9 Department and Bernice - - - at - - - from the Second
10 Circuit. Obviously just persuasive before this court.

11 But they lay out in detail why it's not a
12 constitutional violation if they arrest and even without a
13 warrant based on probable cause of a parole violation. So
14 even under those circumstances a detention would be - - -

15 JUDGE TROUTMAN: How long can they hold him to
16 find out if he violated parole after they've completed
17 their work for the original stop?

18 MR. CASEY: I don't know. I don't know that
19 there's an exact time period obviously. Obviously, at a
20 certain point it would become an arrest and they would need
21 more than reasonable suspicion. They'd need probable
22 cause. But here there was no indication on the record that
23 he was detained unduly. In fact, one thing we know from
24 the record - - -

25 CHIEF JUDGE WILSON: Well, what do you mean by

1 unduly? Duration you mean or without - - -

2 MR. BLOOM: Yes. Yes. In terms of the duration.

3 CHIEF JUDGE WILSON: Well, it's - - - it seemed
4 like a long time from the video.

5 MR. BLOOM: Yes. At least in the video there - -
6 - there are twenty minutes. I don't think that that's so -
7 - -

8 JUDGE TROUTMAN: Were they done with the ticket
9 at that point?

10 MR. BLOOM: I think he - - - he's done with the
11 ticket very quickly. I think after a couple of minutes.

12 JUDGE TROUTMAN: And - - - and when he's done
13 with the ticket why does he have the right to have him sit
14 there until he can figure out if maybe he violated parole?

15 MR. BLOOM: Well, I think this gets to the point
16 that Judge Rivera made earlier that when the officers
17 approached Mr. Thomas initially, there were two separate
18 and distinct bases for a police encounter. Of course you
19 have the stop sign - - - the stop sign infraction, then
20 you'd also have an - - - independent basis for a level-one
21 interaction which is the fact that he's a parolee who's
22 been seen outside his restricted area. So - - -

23 JUDGE SINGAS: So are the police required to
24 separate that out and - - - and treat it as two distinct
25 reasons? You know - - - I - - - I guess that's what I'm -

1 - - I'm grappling with. You know, is there a continuum?
2 Or can both of those things happen simultaneously? They're
3 dealing with a traffic infraction and they also have this
4 information that he's a parole violator based on their
5 fellow officer seeing him outside the jurisdiction?

6 MR. BLOOM: Yes. I think, either way we would -
7 - - we would be fine. And I think whether it happened
8 under the chief judge's hypothetical, if there had - - - if
9 he had stopped at the stop sign and they had simply - - -

10 JUDGE TROUTMAN: But at that point even if they
11 know he's on parole, and a police officer says I know he's
12 on lifetime parole, I know he's outside of the
13 jurisdiction, at that point is it clear that he was in
14 violation? That he didn't have in fact permission from his
15 parole officer to be out? You don't find that out until
16 you actually - - -

17 MR. BLOOM: When they - - -

18 JUDGE TROUTMAN: - - - contact - - -

19 MR. BLOOM: Correct.

20 JUDGE TROUTMAN: - - - parole.

21 MR. BLOOM: When they initiate the - - - the
22 traffic stop they don't know for sure yet whether he's
23 violated parole.

24 JUDGE TROUTMAN: Correct. So how long can they
25 hold him until they can find out all of that if there is an



1 actual violation?

2 MR. BLOOM: Well, I think this is - - - I think
3 we go up the De Bour ladder at this point. I think,
4 initially, when the traffic stop portion is concluded and
5 they had a basis for a level-one interaction just to ask
6 him at a minimum where are you coming from. Then they have
7 a founded suspicion once he starts enmeshing himself in
8 this web of lies. And then reasonable suspicion once - - -
9 and - - - and to go back to your - - - your question about
10 when you know he's violating parole. I think almost
11 immediately we see probably cause that he's violated his
12 parole.

13 When he's asked because there are two violations
14 here. There is leaving the county without permission and
15 then there's also the curfew violation.

16 CHIEF JUDGE WILSON: Yeah. The problem there
17 maybe is that you start with level 1 I guess when you're
18 just asking questions. But at the point you're doing that
19 he is I think sort of detained for a different reason.
20 Right? So you - - - it's almost like you're shoehorning
21 level 2, even though analytically you should be starting at
22 level 1 based on the traffic stop.

23 MR. BLOOM: I think you can carve out the traffic
24 stop. I think the traffic stop portion ends as soon as - -
25 - in - - - in the video you - - -

1 CHIEF JUDGE WILSON: Well, it's before the video
2 I think. Right?

3 MR. BLOOM: When he asks about are - - - you
4 know, who's your parole officer and all that?

5 CHIEF JUDGE WILSON: No, I think that - - - with
6 the video at least as I recall it the traffic stop was over
7 by the time the video starts. We don't see the traffic
8 stop on the video.

9 MR. BLOOM: Correct. Correct. I mean, the - - -
10 addressing the issue of the license and registration, that
11 goes on for a couple of minutes. And then at a certain
12 point you see Mr. Thomas calling out to someone at his
13 house, you know, do you have the documents - - -

14 CHIEF JUDGE WILSON: Well, the officer's saying I
15 don't even want the license and registration from you?

16 MR. BLOOM: Yeah. Yeah, I think at that point,
17 the traffic-stop portion is concluded. We have it. It's
18 pretty much a separate interaction. They could have enter
19 - - - that could have occurred without the traffic stop at
20 all. Just a level-one-interaction - - -

21 CHIEF JUDGE WILSON: But at that point don't you
22 think he believes he is detained, and he is not free to
23 walk away?

24 MR. BLOOM: No - - -

25 CHIEF JUDGE WILSON: So if knows the traffic stop

1 is over at that point? Do you think?

2 MR. BLOOM: I think there's at least evidence in
3 the record, once the officer says to him you know, don't
4 worry about that. Plus the fact that they've been having a
5 very casual conversation up to this point. They clearly
6 know each other. They've just been shooting the breeze.
7 It's still a very casual interaction. I don't know that -
8 - -

9 CHIEF JUDGE WILSON: He's asking for permission
10 to go to the house to get the - - - you know, can I go - -
11 - can I walk over to the house; right? So he doesn't think
12 he's - - - he thinks there's some authority.

13 MR. BLOOM: Yes. But I think just because he's
14 being agreeable in that instance doesn't mean a reasonable
15 person would for sure say that he's not free to leave.

16 JUDGE RIVERA: Does it matter that he's pulled
17 into a driveway? Does that factor at all into the
18 analysis?

19 MR. BLOOM: I don't think so. Except maybe to
20 the extent that it would put him more at ease that he's
21 kind of at his home base. That - - - that's all I can
22 think of right off the top of my head. Otherwise, I don't
23 know that it's particularly relevant that he was pulled
24 into his house. This could have happened anywhere else and
25 I think the analysis would be substantially similar.

1 JUDGE CANNATARO: The - - - can we go back to the
2 line of questioning Judge Singas was pursuing about the - -
3 - the two things that are going on at the same time? In -
4 - - is it - - - are you actually saying that if they had a
5 reasonable suspicion or even probably cause to believe that
6 he had violated his parole, they could detain him or even
7 arrest him at that point?

8 MR. BLOOM: Constitutionally, they can arrest
9 based on probably cause of a parole violation.

10 JUDGE CANNATARO: And what do you mean exactly
11 when you say constitutionally?

12 MR. BLOOM: That it's not a Fourth Amendment
13 violation. And I don't believe it's a violation of New
14 York constitutional law - - -

15 JUDGE CANNATARO: Right. So then let's get to,
16 you know, to - - - to the second issue which is the - - -
17 the evidence that is sought to be suppressed here. That
18 cause - - - that reason for arresting him for a now
19 probable cause parole violation in no way affects the
20 officer's right to somehow effectuate a search of the
21 vehicle. Right?

22 MR. BLOOM: Correct.

23 JUDGE CANNATARO: So with respect to the
24 constitutional perspective of whether they were allowed to
25 detain him for a search of the vehicle while waiting for

1 the parole officer to come where do we put that? Do we
2 allocate that detention towards the parole violation? Or
3 towards the search of the vehicle?

4 MR. BLOOM: I think it's in - - - I think if I
5 understand your question properly, I think it's independent
6 of the search of the vehicle. I think that's solely based
7 on the parole officer's authority.

8 JUDGE CANNATARO: It's really confusing because
9 there's two separate things going on.

10 MR. BLOOM: Yes.

11 JUDGE CANNATARO: But my impression, my sense of
12 what was happening at the time was that they were holding
13 him to give the parole officer an opportunity to come to
14 the scene to see if the parole officer wanted to make an
15 inquiry, search the car, do any of the things that I'm sure
16 you would argue the parole officer has a total right to do.
17 So to me, the detention is related to the search and not to
18 a parole violation.

19 MR. BLOOM: Yes. I - - - but I would say that
20 their subjective motivation in holding him over shouldn't
21 be relevant to the analysis.

22 CHIEF JUDGE WILSON: Well, does it matter whether
23 we think the police are working for the parole officer or
24 the parole officer is working for the police? Does that
25 matter analytically?

1 MR. BLOOM: Well, certainly the police can't be -
2 - - can't be using the parole officer as a - - - as a
3 conduit for their own agenda.

4 CHIEF JUDGE WILSON: Right. And if you watch the
5 video the police, well tell me it - - - let me go say a few
6 things and tell me - - - stop me if you think that I'm
7 mischaracterizing anything. The police did not believe
8 they could search the vehicle themselves.

9 MR. BLOOM: Correct.

10 CHIEF JUDGE WILSON: And you think that's
11 correct? They couldn't?

12 MR. BLOOM: Yeah.

13 CHIEF JUDGE WILSON: Okay. The police wanted to
14 search the vehicle?

15 MR. BLOOM: Yes.

16 CHIEF JUDGE WILSON: The police before trying to
17 contact the parole officer tried to get a drug-sniffing
18 dog?

19 MR. BLOOM: Yes.

20 CHIEF JUDGE WILSON: And had they gotten a
21 dog-sniffing dog and the dog - - - the dog alerted, they
22 would have then had probable cause to search the video?

23 MR. BLOOM: Yes.

24 CHIEF JUDGE WILSON: They were unable to get a
25 police dog. After that, they contacted the parole officer.

1 MR. BLOOM: Yeah.

2 CHIEF JUDGE WILSON: So does the record support
3 the proposition that the search by the police officer - - -
4 it - - - sorry, by the parole officer was really at the
5 behest of the police?

6 MR. BLOOM: Oh, I think - - - I think there's no
7 question that part of it - - - or part of the police
8 officer's motivation in calling the parole officer as the
9 Appellate Division said was because they wanted to get into
10 the car and to possibly find drugs. I think - - -

11 CHIEF JUDGE WILSON: And they couldn't get a dog?

12 MR. BLOOM: Right.

13 CHIEF JUDGE WILSON: They couldn't find some
14 other way around other than you know - - -

15 MR. BLOOM: From their perspective, to some
16 extent - - -

17 CHIEF JUDGE WILSON: Yeah?

18 MR. BLOOM: - - - the parole officer is a dog
19 substitute. From their subjective perspective. But I
20 would argue even if that were their entire motivation - - -

21 CHIEF JUDGE WILSON: Um-hum.

22 MR. BLOOM: - - - the question under Huntley is
23 not the police officers - - - what the police officers are
24 thinking, what their subjective intentions are. The
25 question is when the parole officer arrives, what is he

1 doing? Whose duty is he fulfilling? The question being
2 under Huntley is it substantially related to the
3 performance of his duty?

4 JUDGE CANNATARO: So theoretically, the parole
5 officer could have arrived at the scene and said, no. I
6 don't - - - I don't feel like I need to search the vehicle?

7 MR. BLOOM: And - - - and the police officers
8 would be bound, I think, by that decision. Now, to take a
9 hypothetical perhaps, well - - - let's say the police - - -
10 the parole officer said you know what? I don't think it's
11 in my interest as a parole officer to search the car. I
12 think even then you could argue that a search what - - - a
13 subsequent search by the parole officer would be
14 permissible because objectively there were - - - there were
15 grounds - - - parole grounds to search the car. The fact
16 that the car was used to commit a parole violation.

17 CHIEF JUDGE WILSON: You know, it sort of makes
18 you wonder why when the police officers in Pennsylvania
19 reports that this guy is in Pennsylvania, the first thing
20 isn't a call to the parole officer. Because then there's
21 plenty of time for the parole officer to figure out what -
22 - -

23 MR. BLOOM: Yeah. So I was a - - - I do think
24 there are two explanations for that. One is that they
25 don't know where he's going to end up. And for all I know,

1 he'd go way past Elmira somewhere else. They don't know
2 that it's worth rousing the parole officer on a - - - after
3 9 o'clock on a Friday night.

4 They also aren't sure whether there's even - - -
5 at this point they're not sure whether there's a parole - -
6 -

7 CHIEF JUDGE WILSON: My geography's not very good
8 I guess. But how far is Pennsylvania from Elmira?

9 MR. BLOOM: I think at the point he spotted it's
10 about an-hour-and-a-half roughly from - - -

11 CHIEF JUDGE WILSON: And he stopped at 9:35. So
12 it's 8 o'clock when they see him. So it's not that late.

13 MR. BLOOM: Right. Right. I think that - - - I
14 think that's one possible motivation. Another motivation
15 is they're not sure yet whether there's even a parole
16 violation at all. For all they know, he has a travel pass.
17 Although they discovered that - - -

18 JUDGE HALLIGAN: Well, they can't figure that out
19 without asking the parole officer; can they?

20 MR. BLOOM: Well, even with that - - -

21 CHIEF JUDGE WILSON: I mean, that cuts against a
22 reasonable suspicion, I think.

23 MR. BLOOM: Yes. And - - -

24 JUDGE RIVERA: But the officer in Pennsylvania's
25 off duty. He calls an officer who's on duty. I think the

1 real question is why does that officer delay calling a
2 parole officer at that point and instead follow the
3 directive of the officer who's off duty in Pennsylvania who
4 says keep an eye on him? I think - - -

5 MR. BLOOM: Yeah.

6 JUDGE RIVERA: - - - motivation is not - - - the
7 record seems to suggest that the motivation is not the
8 parole violation. The motivation - - -

9 MR. BLOOM: Yeah. I think - - -

10 JUDGE RIVERA: - - - because he's a - - - he's -
11 - - he's - - - what's a nice way of putting this? He's
12 someone with whom the police are familiar when it comes to
13 narcotics - - -

14 MR. BLOOM: Correct.

15 JUDGE RIVERA: - - - sales. If I can be so
16 generous.

17 MR. BLOOM: And - - -

18 JUDGE RIVERA: And so - - -

19 MR. BLOOM: - - - that's true.

20 JUDGE RIVERA: - - - perhaps that's what's really
21 motivated this? On a Friday night at - - -

22 MR. BLOOM: Quite possibly.

23 JUDGE RIVERA: - - - 8 o'clock.

24 MR. BLOOM: But I'd say that that's not
25 dispositive. The question is an objective standard - - -

1 when the parole officer arrives? And of course, the police
2 officer's subjective motivation may be circumstantial
3 rather than - - - so - - - whether the parole officer
4 really thought that he was doing his duty as a parole
5 officer when he searched the car or whether he was in fact
6 doing it at the behest of the police. But that credibility
7 determination was for the - - - the trial I would say.

8 JUDGE RIVERA: Well, the parole officer
9 understood that the defendant was being detained.

10 MR. BLOOM: Yes.

11 JUDGE RIVERA: So the parole officer understood
12 that the officers are waiting for the parole officer's
13 arrival to do something. It can't be to do nothing.

14 MR. BLOOM: Yes. And that's a factor. But
15 there's still certainly evidence in the record to support
16 the proposition that it was for legitimate, parole purposes
17 that he's searching the car.

18 JUDGE RIVERA: Um-hum.

19 MR. BLOOM: Because it was used to commit the
20 parole violation and because it contained evidence of a
21 technical parole violation in plain view - - -

22 JUDGE RIVERA: The receipts or the packaging?

23 MR. BLOOM: Yeah. The food packaging.

24 JUDGE RIVERA: The receipt was in the wallet.
25 Yeah. Okay.

1 JUDGE SINGAS: Well, I guess you can't unring
2 that bell; right? Like, what - - - he's the parole officer
3 and if his parole is violated, he needs to act on that?

4 MR. BLOOM: Well, he doesn't need to but I think
5 he's - - - he has legitimate grounds.

6 JUDGE SINGAS: Well, that's his job right?

7 MR. BLOOM: Yeah. I think - - -

8 JUDGE SINGAS: - - - as a parole officer?

9 MR. BLOOM: - - - he should. I think he should
10 at that point.

11 JUDGE SINGAS: Do you have any - - - can we just
12 switch gears a little bit - - - any concerns about the
13 standards that were used below, founded suspicion versus
14 reasonable suspicion? Are we bound by one or the other?

15 MR. BLOOM: Yes.

16 JUDGE SINGAS: What are your thoughts on that?

17 MR. BLOOM: And I did notice that the court below
18 may - - - the courts below may have conflated founded
19 suspicion with reasonable suspicion. I think - - -

20 JUDGE CANNATARO: But they said founded
21 suspicion. Right?

22 MR. BLOOM: Yes. I think there was also
23 reasonable suspicion very quickly as well. I think even
24 before the six-minute mark in the video as soon as the
25 defendant gets to his - - - his third lie that he just came

1 from Rochester.

2 JUDGE CANNATARO: Oh. You're saying that would
3 give rise to reasonable suspicion?

4 MR. BLOOM: Yes. And we get the reasonable - - -

5 JUDGE CANNATARO: But those aren't - - - that's
6 not the finding made in the - - -

7 JUDGE HALLIGAN: No.

8 JUDGE CANNATARO: - - - in the suppression court.

9 MR. BLOOM: I don't know.

10 JUDGE TROUTMAN: So if they didn't review it
11 based on the right standard don't they have - - - doesn't
12 it have to go back to have them do that?

13 MR. BLOOM: I would have to - - - I don't know.
14 I would have to review it more - - - more carefully,
15 obviously, to make sure.

16 JUDGE CANNATARO: Well, do you think we could
17 make that finding independently that there was reasonable
18 suspicion? And on a mixed question of facts - - -

19 MR. BLOOM: On a mixed question, all you'd need
20 is evidence in the record to support the proposition that
21 there was reasonable suspicion.

22 JUDGE CANNATARO: But you - - - but you need
23 record evidence to support the finding but the only finding
24 was founded suspicion?

25 MR. BLOOM: Well, there was also something else.

1 JUDGE CANNATARO: We'd have to make our own
2 independent finding of reasonable suspicion.

3 MR. BLOOM: There was also something else. You
4 could rely on my secondary argument about that there was at
5 least probably cause to arrest for the parole violation
6 constitutionally even though under statutory law they
7 needed a warrant because the - - - the judge - - -

8 JUDGE CANNATARO: But I don't know - - - but I -
9 - - I still do not - - - maybe you tried to explain this to
10 me before and I didn't understand it. I don't know what
11 the probable cause to arrest for the parole violation does
12 in terms of giving you a justification to search - - -

13 MR. BLOOM: It doesn't - - -

14 JUDGE CANNATARO: - - - the vehicle.

15 MR. BLOOM: - - - it doesn't just search. It
16 does to arrest, and therefore hold him and so the parole
17 officer arrives and searches for his own independent
18 reasons. So it gets to - - - it gets you to the parole
19 officer's independent basis for a search.

20 And the fact that the defendant was on parole as
21 being a basis for the detention is something that the trial
22 court said it explicitly in its decision - - - it said both
23 because of founded suspicion of criminality and because of
24 independent circumstances of the parole violation, they
25 each gave grounds to detain him. So that's certainly - - -

1 I would have to review about the reasonable suspicion
2 issue, but certainly that - - - that is cited explicitly in
3 the trial court's decision.

4 CHIEF JUDGE WILSON: Thank you.

5 MR. BLOOM: Thank you.

6 MR. CASEY: Just on the point of the - - - their
7 secondary argument, I believe by the time he stopped any
8 parole violations of being out of the jurisdiction for
9 beyond his curfew were completed. So it's not an ongoing
10 violation at that point. It's done.

11 In addition, I would argue that the record will
12 reflect that if there was probable cause to detain or
13 probable cause of a parole violation, it wasn't developed
14 until too long into that detention that would make the
15 development of that illegal because he shouldn't have been
16 detained to the point where they got to talk to the parole
17 officer to contain, yeah, that actually did violate it.
18 And now you can - - -

19 JUDGE CANNATARO: Counsel, where do you stand on
20 a police arrest for a parole violation? Is that possible?

21 MR. CASEY: I think they got to have - - - they
22 have to have the parole officer involved at a minimum. I -
23 - - I'm not sure - - - I - - - I'm not really - - -

24 JUDGE CANNATARO: Or a - - - or a - - -

25 MR. CASEY: - - - sure. But - - -



1 JUDGE CANNATARO: - - - a violation warrant, or
2 something? Can - - - I mean, can they just say we've
3 figured out, we've deduced that you - - - you have violated
4 your parole so you are now under arrest. I'm just - - - I
5 don't know the answer to that which is what - - - can that
6 happen?

7 MR. CASEY: Judge, I don't - - - I don't either,
8 but I don't think - - - even if it could that in this case
9 it - - - it would - - - it was permissible - - - it's
10 permissible for them to rely on that now. That's all - - -
11 that's all I can - - -

12 JUDGE GARCIA: Okay. Counsel, could I just ask
13 quickly a variation on - - - on the facts that were set out
14 by the Chief Judge about this case?

15 Suppose all the things that happened here
16 happened, you know they see this person, but they call the
17 - - - they - - - think there are drugs in the car, they
18 want to get in the car, they call of a dog as they're
19 pulling the guy over, they contact the parole officer when
20 they get to the car, and they're still in the midst of the
21 traffic stop. They ask if they can search and assume they
22 have a basis for doing that.

23 They ask if they can search so nothing illegal
24 has happened to this point. But clearly the officers want
25 to get in the car. Then the parole officer shows up while

1 the stop is still legit; no Rodriguez problem. Would you
2 still have a problem because the parole officer is acting
3 to fulfill the mission of the police who clearly want to
4 get in the car? Or do you need the predicate violation of
5 the illegal detention?

6 MR. CASEY: I think at that point it's police
7 one; Mr. Thomas zero. I think that they win. I think they
8 win there.

9 JUDGE GARCIA: Fair enough.

10 MR. CASEY: But again, that - - - and I think
11 they could have - - -

12 JUDGE GARCIA: I understand. This is - - -

13 MR. CASEY: - - - I think it was good policework.
14 They just - - - it didn't - - - it didn't follow the De
15 Bour.

16 JUDGE GARCIA: No. I understand.

17 MR. CASEY: That's - - - that's it. Thank you.

18 CHIEF JUDGE WILSON: Thank you.

19 (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. Kevin Thomas, No. 52 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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