

COURT OF APPEALS SHINES A CRITICAL LIGHT ON TINTED WINDOW STOPS

Thomas P. Franczyk

Mentor-at-Large to the

Assigned Counsel Program

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INTRODUCTION

In *People v Nektalov* (_NY3d_, 2024 Slip Op 02725 [2024]), the Court of Appeals reversed a lower court's decision to deny suppression of drugs (two bags of cocaine recovered from the defendant's person following a traffic stop), finding that a detective's conclusory testimony that the defendant's vehicle windows were "excessively tinted" was not enough to establish probable cause to pull the vehicle over (citing *People v Hinshaw*, 35 NY3d 427 [2020]).

FACTS

A detective and his partner observed the defendant's vehicle travelling on a public highway and decided to pull it over for excessive window tints in violation of VTL 375 (12-a) (b) which states that "no person shall operate a motor vehicle on any public highway, road or street with windows that have a light transmittance of less than 70 percent." Subsections 1 and 2 apply this rule to the windshield and to the front driver's and passenger's side.

Upon approaching the stopped vehicle, they observed marijuana in plain view inside and directed the defendant to exit. Once he did so, a search of his person revealed the bags of cocaine.

The defendant moved to suppress for lack of probable cause, but the criminal court disagreed and denied suppression. The defendant then pleaded guilty to Criminal Possession of a Controlled Substance (CPCS) 7th degree. The Appellate Term affirmed the lower court's denial of suppression. (78 Misc 3d 1 [App Term, 2d Dept, 2d, 11th and 13th Jud Dists, 2022]).

NO FACTUAL BACK UP, NO PROBABLE CAUSE

Acknowledging that review of probable cause determinations typically involves a mixed question of law and fact, the Court of Appeals stated that where an issue arises as to the threshold standard by which probable cause is measured, a question of law is presented for review (citing *People v McRay*, 51 NY2d 594 [1980]).

The pertinent question, as the Court saw it, was whether the detective REASONABLY BELIEVED that the defendant's vehicle's windows were over-tinted in violation of VTL 375 (12-a) (b) (*People v Estrella*, 10 NY3d 845 [2008]). Noting that tinted windows are verboten only when excessively so (i.e., by letting in less than 70 percent of light), the Court found that the detective's testimony,

unadorned by any supporting facts, amounted to nothing more than a legal conclusion that these windows violated the VTL.

Noticeably missing was any testimony, for example, that the detective could not see through the windows (*People v Biggs*, 208 AD3d 1340 [2nd Dept 2022], *People v Collins*, 105 AD3d 1378 [4th Dept 2013], nor was there any other evidence (such as a tint-meter reading) to confirm the reasonableness of his conclusion.

There was also nothing offered with respect to the detective's training and/or experience in identifying illegally tinted windows (*People v Jones*, 90 NY2d 835 [1997]) or in stopping vehicles on this basis (*People v Bacquie*, 154 AD3d 648 [2nd Dept 2017]).

As the Court observed, the record was devoid of any evidence to support the basis for the detective's belief that the tinted windows violated the Vehicle and Traffic Law. Therefore, the evidence was ordered suppressed, and the charge dismissed.

FINAL THOUGHT

While deeply darkened windows may still provide a legal basis to stop a motor vehicle, no longer should suppression courts be satisfied with an officer's conclusory testimony that the tint was excessive. Absent facts offered in support of such conclusion (and some objective verification with a tint meter), it should be argued that the officer's belief, standing alone, is not reasonable, and therefore, cannot provide probable cause to support the intrusion (*People v Hicks*, 68 NY2d 238 [1986]).