CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Andrew Lopez
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Appeals Unit ("Appeals Unit") regarding summons #PA242423 is **reversed and remanded for further proceedings consistent with this Order.**

STATEMENT OF FACTS

In summons #PA242423, dated June 30, 2014, Respondent-driver was charged with violating Sections 19-506(b)(1) and 19-506(c) of the New York City Administrative Code for unlicensed for-hire vehicle activity.[1] At a July 3, 2014 hearing on the summons, TLC Officer Kraniotakis testified that he stopped Respondent's car because the license plate was covered. During the stop, and in response to Officer Kraniotakis' questions, the passengers said that they were paying Respondent for the ride. Respondent is not licensed by the TLC and did not refute the officer's testimony.

Hearing Officer ("H.O.") Elizabeth Knajdl found that the officer's testimony was credible and that there was sufficient reason for the traffic stop. The H.O., however, dismissed the summons because "there was no reasonable suspicion of for-hire activity for the officer to stop the [Respondent's] car."

On appeal, the TLC first argued that the inspector was permitted to talk to the passengers during the valid traffic stop and formed a reasonable suspicion of for-hire activity on the basis of the conversation. The TLC also argued that even if reasonable suspicion of for-hire activity is required prior to the traffic stop, such suspicion was present; because the TLC requires that for-hire vehicles display license plates with the "T&LC" legend, Respondent's covered license plate gave the inspector reason to believe that there was unlicensed activity. Finally, the TLC argued that the H.O.'s findings are not supported by substantial evidence.

[1] Section 19-506(b)(1) provides, in relevant part, that "any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a … for-hire vehicle in the city, without first having obtained or knowing that another has obtained a license for such vehicle … shall be guilty of a violation[.]"

Section 19-506(c) provides, in relevant part, that no "person shall advertise or hold himself or herself out as doing business as a . . . 'for-hire vehicle service,' or other similar designation unless a for-hire vehicle license is in effect for each vehicle used therefor."

The Appeals Unit affirmed the H.O.'s decision, finding that because the inspector did not observe any indicia of illegal for-hire activity "prior to or simultaneously with the stop for the traffic violation," he could not question the driver or passengers about for-hire activity.

The TLC now petitions the Chair pursuant to TLC Rule 68-12. Citing *Arizona v. Johnson*, 555 U.S. 323 (2009), and *United States v. Harrison*, 606 F.3d 42 (2d Cir. 2010), the TLC argues that inspectors may question passengers and drivers during a valid traffic stop about matters unrelated to the reason for the stop, including for-hire activity, as long as the stop is not unreasonably delayed. The TLC also argues that the H.O. failed to make findings of fact and conclusions of law regarding the length of the traffic stop and any unreasonable delay resulting from the unrelated questioning.

ANALYSIS

According to the Appeals Unit, "[a]lthough an inspector may stop a vehicle for a traffic infraction, the inspector may not question the driver or passengers about for-hire activity without independent, observable indicia of for-hire activity prior to or simultaneously with the stop for the traffic violation." This somewhat elliptical statement, which has been articulated in various forms in other OATH decisions,[2] oversimplifies applicable law. Moreover, it fails to account for the fact that a traffic stop is a "dynamic situation[] during which the degree of belief possessed at the point of inception may blossom by virtue of responses or other matters which authorize and indeed require additional action as the scenario unfolds."[3]

The Appeals Unit is correct that TLC inspectors are authorized to stop a vehicle for a traffic infraction.[4] And particularly in cases where an inspector has probable cause to believe that the driver has committed a traffic infraction, it is does not matter if the inspector's primary motivation for conducting the stop is to investigate illegal for-hire activity.[5] At issue here, however, is what takes place during the traffic stop; indeed its scope, duration, and intensity are subject to various constraints, but nothing as restrictive as what the Appeals Unit declares.

Under *People v. De Bour*, 40 N.Y.2d 210 (1976), and its progeny, New York applies a four-part analysis to "police-citizen" encounters, including lawful traffic stops.[6] Each level "authorizes a

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[2] *Taxi & Limousine Commission v. Richard Ortega*, Lic. No. 54979609 (November 8, 2013); *Taxi & Limousine Commission v. Viktor Yusupov*, Lic. No. 666052 (November 8, 2013); *Taxi and Limousine Commission v. John Berthold*, Lic. No. 5489287 (August 1, 2013); *Taxi & Limousine Commission v. Mai Qi Xin*, 80005936A (December 16, 2013).

[3] *People v. De Bour*, 40 N.Y.2d 210, 225 (1976).

[4] *See* Section 2.10(27) of the New York Criminal Procedure Law.

[5] *See People v. Robinson*, 97 N.Y.2d 341, 349 (2001) ("[W]here a police officer has probable cause to believe that the driver of an automobile has committed a traffic violation, a stop does not violate article I, § 12 of the New York State Constitution. In making that determination of probable cause, neither the primary motivation of the officer nor a determination of what a reasonable traffic officer would have done under the circumstances is relevant."). There is some question as to whether a probable cause standard only applies to pretext stops. *See, e.g., People v. Ilardi*, 13 Misc. 3d 1210(A) (Dist. Ct. Nassau Co. 2006) ("It remains to be seen whether the probable cause standard is limited to cases in which the facts are consistent with a pretext stop or whether it applies to *all* traffic stops."). By contrast, "a traffic stop based on a reasonable suspicion of a traffic violation comports with the Fourth Amendment." *United States v. Stewart,* 551 F.3d 187, 191 (2d Cir. 2009).

[6] *People v. Garcia*, 20 N.Y.3d 317, 324 (2012).

separate degree of police interference with the liberty of the person approached and consequently requires escalating suspicion on the part of the investigating officer."[7] A request for information, the lowest level of interference, permits an officer to ask a person "basic, non-threatening questions" that are supported by an articulable basis.[8] The right to request information turns on "the manner and intensity of the interference, the gravity of the crime involved and the circumstances attending the encounter."[9] Thus the "brevity of the encounter and the absence of harassment or intimidation" are relevant in determining whether an encounter is anything more than a request for information.[10] But "extended and accusatory" questions "that focus[] on the possible criminality of the *person approached*" take the encounter past a request for information and must be supported by a "founded suspicion that criminality is afoot."[11]

Under a less stringent constitutional standard, a traffic stop that is "justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."[12] But "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop ... do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."[13] Inquiries into unrelated matters need not be supported by reasonable suspicion.[14]

Legitimate expectations of privacy are protected under both the *De Bour* and constitutional standards.[15] To assert such a privacy interest for the purpose of excluding relevant evidence, an individual must demonstrate "a subjective expectation of privacy and whether that expectation

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[7] *People v. Hollman*, 79 N.Y.2d 181, 185 (1992).

[8] *Hollman*, 79 N.Y.2d at 189. *See, e.g.*, *People v. Tejada*, 270 A.D.2d 655, 656 (3rd Dep't 2000) (officer's request for defendant-passenger's name and date of birth did not exceed a reasonable request for information, as it was neither invasive nor focused on possible criminality); *People v Nelson*, 266 A.D.2d 730 (3rd Dep't 1999) (police officer asking defendant-driver during a traffic stop what a plainly visible cigar box was for was an "innocuous question" and did not warrant suppression of the drugs found in the box); *People v. Jackson*, 251 A.D.2d 349 (2nd Dep't 1998) (officer who spotted a bag lying on the floor of an unlicensed livery cab was justified in asking the defendant-passenger if the bag belonged to him).

[9] *De Bour*, 40 N.Y.2d 210 at 219.

[10] *Hollman*, 79 N.Y.2d at 190.

[11] *Id.* at 191 (emphasis added).

[12] *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). *See, e.g.*, *United States v. Harrison*, 606 F.3d 42, 45 (2d Cir. 2010) (finding that even when a police officer had all of the information needed to issue the traffic ticket before he first approached the people in the car, the officer's questions to corroborate the driver's story, and ask questions about the passengers' comings and goings, all of which lasted five to six minutes, did not unconstitutionally prolong the stop); *United States v. Santillian*, 2013 WL 4017167 (S.D.N.Y. Aug. 7, 2013) (finding it reasonable for a police officer "to ask questions about the occupants' comings and goings or question them separately, including removing each from the vehicle," even though it occurred after the officer conducted DMV and warrant checks and took approximately 17 minutes).

[13] *Harrison*, 606 F.3d at 45.

[14] *See Muehler v. Mena*, 544 U.S. 93, 94 (2005); *see also U.S. v. Mendez*, 476 F.3d 1077, 1081 (9th Cir. 2007) ("[B]ecause "the officers' questioning did not prolong the stop, we are compelled to hold that the expanded questioning need not have been supported by separate reasonable suspicion."); *U.S. v. Olivera-Mendez*, 484 F.3d 505 (8th Cir. 2007) ("[S]ince the 'mere police questioning does not constitute a seizure' unless it prolongs the detention of the individual, and, thus, no reasonable suspicion is required to justify questioning that does not prolong the stop.").

[15] *See People v. Ponder*, 54 N.Y.2d 160, 165-66 (1981); *People v. Bell*, 9 A.D.3d 492, 494-95 (2d Dep't 2004).

would be accepted as reasonable by society."[16] Moreover, the individual "must have been a victim of a search and seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else."[17]

Here, both the Hearing Officer and the Appeals Unit misread or misapplied applicable law, thereby cutting short a meaningful inquiry into what actually took place during the traffic stop.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Andrew Lopez (Lic. No. 5538066), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons # PA242423 is **reversed and remanded for further proceedings consistent with this Order**.

This constitutes the final determination of the TLC in this matter.

So Ordered: November 21, 2014

Christopher C. Wilson, ***Deputy Commissioner/General Counsel***

16 *People v. Weaver*, 12 N.Y.3d 433, 439 (2009). *See also Finn's Liquor Shop, Inc. v. State Liquor Auth.*, 24 N.Y.2d 647, 662 (1969) (finding that the exclusionary rule applies to administrative proceedings).

17 *People v. Wesley*, 73 N.Y.2d 351, 355 (1989) (citing *Jones v. United States,* 362 U.S. 257, 261 (1960)). *See also Alderman v. United States*, 394 U.S. 165, 179 n.1 (1969) ("The Fourth Amendment . . . does not protect persons engaged in crime from the risk that those with whom they associate or converse will cooperate with the Government." (citing *Hoffa v. United States*, 385 U.S. 293, 303 (1966)).