

11/5/2009 N.Y.L.J. 28, (col. 1)

New York Law Journal  
Volume 242  
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Thursday, November 5, 2009

Decisions of Interest  
Westchester Criminal Practice

OFFICER SATISFIES APPELLATE TERM REQUIREMENT IN MEASURING  
LIGHT TRANSMISSION OF  
WINDOW

Village Justice David Otis Fuller, Jr.

PEOPLE v. GUMBS, Decided 10/29/09--

Appearances of Counsel: Gary Gjertsen: Deputy Village Attorney, for plaintiff.

Defendant: pro se

DECISION AFTER TRIAL

The defendant is charged with driving a vehicle having front side windows with 'a light transmittance of less than seventy percent' on May 18, 2009 in the Village of Tuckahoe in violation of Section 375(12-a) (b)(2) of the Vehicle and Traffic Law.

The officer testified that he motioned for the defendant driver to stop and ticketed him for the charge because he could not see at first the driver's face and determined that the front side windows were darker than those of a police vehicle which are just at the allowable light-transmittance limit of seventy percent.

The defendant contends that the case was not proved because the officer's finding of an unlawful degree of light transmission was not checked by a measuring device. (known as a tint-meter).

The cases support a finding of probable cause without the use of a tint-meter. See *People v. Hawkins*, 45 AD 3d 989, 991 (3d Dept 2007); *People v. Osborne*, 158 AD2d 740, 742 (3d Dept 1990) and, *People v. Andeliz*, 3 Misc 3d 384, 388(Sup Ct. Kings, 2004). The Appellate Term, Second Department, 6 Misc 3d 30(2004), however, has reversed a conviction after trial where a tint-meter was not used because

'the officer did not establish that he possessed any experience in visually determining the amount of light transmitted through a window or some other satisfactory reason or basis, such as a tint-meter, for his opinion.' *People v. Tompkins*, at 31.

Here, the officer testified that, although no police certification was given for measuring light transmission, he had received training in the area and used the standard of darker than that of a police vehicle, the maximum darkness permitted. He also testified that he could not see the face of the driver of the vehicle from the side window at first.

The question is whether the officer's comparison can serve as the satisfactory reason or

basis required by the Appellate Term. The court recognizes that an average person is able to distinguish whether a window is darker or lighter than another window. Such a comparison has been approved for probable cause for a stop. *People v. Vonthaden*, 13 Misc 3d 408, 411-12 (Dist. Ct. Nassau, 2006). Using the windows of a police vehicle as the outer standard of legality, the officer could reasonably conclude that the side windows of the vehicle the defendant was driving were darker than the degree permitted by statute, thus satisfying the requirement of *People v. Tompkins*, supra.

Because the officer credibly testified that the side windows of the vehicle driven by defendant were darker than those of the police vehicle, the court finds defendant guilty as charged.

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LIGHT TRANSMISSION OF WINDOW

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Supreme Court, Appellate Term, New York.  
9th and 10th Judicial Districts.

**The PEOPLE of the State of New York, Respondent,  
v.  
James R. TOMPKINS, Appellant.**

Oct. 22, 2004.

**Background:** Defendant was convicted in the Justice Court, Town of Philipstown, Putnam County, S. Tomann, J., of driving with excessively tinted side windows. Defendant appealed.

**Holding:** The Supreme Court, Appellate Term, held that officer's testimony was legally insufficient to establish that defendant was driving with excessively tinted side windows.  
Reversed.

**West Headnotes**

KeyCite Citing References for this Headnote

110 Criminal Law  
110XVII Evidence  
110XVII(R) Opinion Evidence  
110k492 Effect of Opinion Evidence  
110k494 k. Experts.

Police officer's testimony that he estimated that windows on defendant's vehicle permitted about 15% light transmittance, which was below the legal threshold, was legally insufficient to establish that defendant was driving with excessively tinted side windows, where officer did not establish that he possessed any experience in visually determining amount of light transmitted through windows or any other reason or basis for his opinion. McKinney's Vehicle and Traffic Law § 375, subd. 12-a(b).

\*\*797 \*30 James R. Tompkins, appellant pro se.

**Present: McCABE, P.J., RUDOLPH and ANGIOLILLO, JJ.**

\*\*798 Appeal by defendant from a judgment of the Justice Court, Town of Philipstown, Putnam County (S. Tomann, J.), rendered October 7, 2003, convicting him of driving with excessively tinted side windows (Vehicle and Traffic Law § 375 [12-a] [b] ) and imposing sentence.

\*31 Judgment of conviction unanimously reversed on the law and as a matter of discretion in the interest of justice, accusatory instrument dismissed and fine, if paid, remitted.

Defendant was charged with driving a vehicle which had excessively tinted side windows ( *see* Vehicle and Traffic Law § 375 [12-a] [b] ). At trial, the officer testified that he estimated that the windows only permitted about 15% light transmittance. Although such a percentage of light transmittance is below the legal threshold ( *id.* ), the officer did not establish that he possessed any experience in visually determining the amount of light transmitted through a window, or some other satisfactory reason or basis, such as a “tint-meter,” for his opinion. As a result, the evidence was legally insufficient to establish the defendant's guilt beyond a reasonable doubt ( *cf. People v. Olsen*, 22 N.Y.2d 230, 292 N.Y.S.2d 420, 239 N.E.2d 354 [1968] ). Although defendant did not properly preserve his objection to the sufficiency of the evidence, we nevertheless review it in the exercise of our interest of justice jurisdiction ( *see* CPL 470.15[6][a] ).

Consequently, we do not pass on defendant's remaining contentions.

N.Y.Sup.App.Term,2004.

People v. Tompkins

6 Misc.3d 30, 789 N.Y.S.2d 797, 2004 N.Y. Slip Op. 24401

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People v. Tompkins 6 Misc.3d 30, 31, 789 N.Y.S.2d 797,  
798) (N.Y.Sup.App.Term,2004)