

Police Dep't v. Cromwell

OATH Index No. 2251/26, mem. dec. (June 25, 2026)

Petitioner established compliance with the hearing notice requirement of the *Krimstock* Order, probable cause for the arrest, a likelihood of success at a civil forfeiture proceeding, and that releasing the vehicle poses a heightened risk to the public. Petitioner may retain respondent's vehicle pending a civil forfeiture proceeding.

New York City Office of Administrative Trials and Hearings

In the Matter of

Police Department

Petitioner

-against-

Zavien Cromwell

Respondent

Memorandum Decision

Michael D. Turilli, *Administrative Law Judge*

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Petitioner, the Police Department, brought this proceeding to determine its right to retain a vehicle seized as the alleged instrumentality of a crime pursuant to section 14-140 of the Administrative Code. Respondent, Zavien Cromwell, is the titled and registered owner of the vehicle. Petitioner seized the vehicle, a black 2018 Honda Accord, following respondent's arrest on April 20, 2026, for criminal possession of a weapon and other charges. This proceeding is mandated by *Krimstock v. Kelly*, 2007 U.S. Dist. LEXIS 82612 (S.D.N.Y. Sept. 27, 2007) [3d amended order and judgment] ("*Krimstock Order*"). See generally *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), cert. denied, 539 U.S. 969 (2003); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

The hearing was initially scheduled for June 15, 2026. At a conference held on June 12, 2026, this tribunal granted respondent's request to adjourn the hearing to June 22, 2026. At the hearing, which was held remotely by videoconference, petitioner and respondent solely relied upon documentary evidence.

For the reasons set forth below, I find that petitioner may retain the vehicle pending a civil forfeiture proceeding.

Analysis

Petitioner seeks to retain the seized vehicle as the instrumentality of a crime pending the outcome of its civil forfeiture action. As a preliminary matter, respondent asserted as an affirmative defense that petitioner failed to notify him of the hearing date within two business days of receipt of his demand for a hearing (ALJ Ex. 1). Respondent contended that the petition must be dismissed and the vehicle released as a result (*Id.*).

Petitioner presented respondent's demand for a hearing, the notice of hearing, and an affidavit of mailing of the notice of hearing (Pet. Exs. 1-3). Petitioner received respondent's demand for a hearing on June 1, 2026 (Pet. Ex. 1). The form listed respondent's address in Astoria and his attorney's address in the Bronx (*Id.*). In her affidavit, Principle Administrative Associate Catherine Duboc of the Police Department's Legal Bureau swore that on June 3, 2026, she notified respondent and respondent's attorney, in writing at the addresses listed on the demand form, that a retention hearing had been scheduled for June 15, 2026 before this tribunal (Pet. Ex. 3). Specifically, she stated that she "placed each letter of notice in a sealed,

postage paid envelope,” “addressed each envelope containing the letter of notice for delivery to the parties identified above, at the above-listed addresses,” and “[o]n June 3, 2026, [she] deposited such postage paid and addressed envelopes, containing the letters of notice, in an official depository of the United State Postal Service [USPS]” (*Id.*).

In support of the affirmative defense, respondent offered a copy of the notice of hearing with the post-marked envelope addressed to respondent’s attorney in the Bronx (Resp. Ex. A). The notice of hearing, signed by Principle Administrative Associate Duboc, stated that respondent’s demand for a hearing had been received on June 1, 2026, and that the hearing had been scheduled for June 15, 2026 (*Id.*). The envelope was post-marked from New York, New York on June 5, 2026, and stamped “Received” at approximately 8:00 a.m. on June 8, 2026 (*Id.*). Respondent’s attorney stated that his office’s mailroom stamped the envelope as “Received,” but he did not have actual notice of the hearing until June 10, 2026.

The *Krimstock* Order provides that:

The claimant of a seized vehicle has the right to a hearing at OATH, which will commence on a date and at a time, as fixed by the Police Department within 10 business days after receipt by the Police Department of a written demand for such hearing . . . unless the date for such hearing shall have been extended by OATH upon a showing of good cause The Police Department will notify OATH, the claimant and the relevant District Attorney of the date of the hearing in a notice to be sent by mail, email, or fax within two business days after receipt of the written demand for a hearing, to the addresses specified for such notice by the claimant and the District Attorney.

Krimstock, 2007 U.S. Dist. at *6-7.

The notice requirements of the *Krimstock* Order have been strictly construed, and when challenged, petitioner must show that it complied with its obligations. *Police Dep’t v. Brooks*, OATH Index No. 1745/13, mem. dec. at 2 (Mar. 29, 2013). This tribunal has recognized that “[t]he purpose of the *Krimstock* Order, to provide clear notice of rights and ensure the availability of prompt preliminary hearings, is undermined by [the] failure to comply with its notice obligations” and held that seized vehicles must be returned where petitioner has failed to comply with the *Krimstock* Order’s requirement to provide timely notice of the right to a retention hearing. *Police Dep’t v. Ruiz*, OATH Index No. 1440/07, mem. dec. at 4 (Mar. 27, 2007);

see also *Police Dep't v. Coulanges*, OATH Index No. 2494/19, mem. dec. at 4-5 (June 14, 2019) (directing release of vehicle where the evidence did not establish that respondent was served with notice of right to retention hearing at the time of his arrest and the service by mail was untimely); *Police Dep't v. Murray*, OATH Index No. 1631/06, mem. dec. at 2-5 (Apr. 25, 2006) (granting motion to dismiss where petitioner failed to timely serve the registered owner of the vehicle with notice of right to retention hearing by mail).

Similarly, this tribunal has held that petitioner's failure to comply with the *Krimstock* Order's requirement to send notice of the hearing date within two business days of receiving the written demand for a hearing requires the release of the vehicle when the hearing is scheduled more than ten business days from receipt of the written demand. See *Police Dep't v. Singletary*, OATH Index No. 342/06, mem. dec. at 3-5 (Aug. 24, 2005) (granting motion to dismiss where petitioner, due to an unexplained "office failure," mailed the notice of hearing 14 business days after the initial receipt of respondent's demand for a hearing and scheduled the hearing 22 business days after such receipt); *Police Dep't v. Manning*, OATH Index No. 1162/05, mem. dec. at 2, 5 (Jan. 25, 2005) (directing release of vehicle where the uncontested evidence established that petitioner failed to mail notice of the hearing date within two business days of receipt of the demand and schedule the hearing within ten business days).

Petitioner established by a preponderance of the credible evidence that the notice of hearing was timely mailed to respondent and his attorney. Principle Administrative Associate Duboc swore that she personally deposited two postage-paid and properly addressed envelopes containing the notice of hearing into an official USPS depository on June 3, 2026. Respondent acknowledged that his attorney received the notice of hearing mailed by Principle Administrative Associate Duboc but argued that the envelope post-marked by the USPS on June 5, 2026 "raise[d] questions" about the truthfulness of the affidavit. It is not clear on this record what accounted for the two-day disparity between the date of mailing on the affidavit and the post-marked date on the envelope. Principle Administrative Associate Duboc did not detail when she deposited the envelopes into an official USPS depository on June 3, 2026, where the depository was located, and at what time the mail was regularly collected from that depository by the USPS. Respondent did not offer the post-marked envelope sent to his address in Astoria

and did not testify as to when he was first notified of the hearing date. Under these circumstances, the post-marked envelope addressed to respondent's attorney, without more, was insufficient to undermine the veracity of the sworn affidavit and reasonably support the conclusion that petitioner did not mail the notice of hearing within two business days of receipt of respondent's demand on June 1, 2026. *Cf. Police Dep't v. Jones*, OATH Index No. 1854/19, mem. dec. at 8-9 (Mar. 26, 2019) (finding that petitioner's affidavit of mailing was insufficient to rebut the inference that the notice was untimely based on the envelope post-marked five days after the date in the affidavit and respondent's credible testimony of when she received the notice of her right to a retention hearing); *Police Dep't v. House*, OATH Index No. 587/07, mem. dec. at 3 (Sept. 27, 2006) (finding that petitioner's file entry regarding the date that notice was mailed to be sufficiently rebutted by "compelling physical evidence" consisting of the Department's notice dated a week later and the post-marked envelope).

Moreover, unlike in *Manning* and *Singletary*, it was undisputed that petitioner scheduled the hearing for June 15, 2026, which was exactly ten business days after its receipt of respondent's written demand on June 1, 2026. This tribunal has recognized a "narrow exception to the strict application of the *Krimstock* Order's notice requirements where . . . the Department's failure to supply timely notice of the hearing rights has resulted in harmless error." *Police Dep't v. Stephenson*, OATH Index No. 2195/07, mem. dec. at 5-6 (June 14, 2007) (denying motion to dismiss based on petitioner's failure to comply with the dual notice requirement where the hearing was nonetheless held within 10 business days of the vehicle's seizure); *see also Police Dep't v. Figueroa*, OATH Index No. 1525/08, mem. dec. at 3-4 (Feb. 15, 2008) (finding harmless error from petitioner's failure to comply with dual notice requirement where respondent mailed the written demand one day after seizure and the hearing was scheduled within ten business days of receipt); *Police Dep't v. Tripp*, OATH Index No. 148/06, mem. dec. at 3 (July 19, 2005) (finding that respondent was not prejudiced by petitioner's failure to comply with the dual notice requirement where the hearing was nonetheless held within the procedural time frame of the *Krimstock* Order); *cf. Police Dep't v. Pizarro*, OATH Index No. 2625/10, mem. dec. at 6 (June 10, 2010) (declining to excuse petitioner's failure to comply

with the dual notice requirement as harmless error where the hearing was not held with the *Krimstock* Order's ten-day timeframe).

Even if petitioner's mailing of the notice of hearing were found to be untimely based on the post-marked envelope, petitioner nonetheless afforded respondent the opportunity to be heard in a timely manner, as required by the *Krimstock* Order. The hearing was scheduled within ten business days of respondent's demand, and the notice of hearing was received at respondent's attorney's office one week before the hearing date. Respondent failed to demonstrate any prejudice from the two-day delay. Respondent's motion to dismiss the petition for untimely service of the notice of hearing is denied.

Petitioner is required to prove by a preponderance of the evidence that: (i) probable cause existed for the arrest resulting in the vehicle's seizure; (ii) it is likely that petitioner will prevail in a civil action for forfeiture of the vehicle; and (iii) it is necessary that the vehicle remain impounded either to protect the public safety or ensure its availability for a judgment of forfeiture. *Krimstock*, 2007 U.S. Dist. at *2; *Canavan*, 1 N.Y.3d at 144-45. Due process requires an "initial testing of the merits of the City's case," not "exhaustive evidentiary battles that might threaten to duplicate the eventual forfeiture hearing." *Krimstock*, 306 F.3d at 69; *see also Canavan*, 1 N.Y.3d at 144 n.3 (hearing is intended to establish "the validity, or at least the probable validity, of the underlying claim") (citation omitted).

At the hearing, petitioner relied upon an arrest report, complaint report, criminal court complaint, and property invoices relating to respondent's arrest (Pet. Exs. 4-8). According to the arrest and complaint report, Officer Marc Segarra observed respondent driving a black 2018 Honda Accord with New York license plate MDP3657 on April 20, 2026, at approximately 11:45 a.m., southbound on Third Avenue in the Bronx (Pet. Exs. 4, 5). The officer observed that the vehicle was missing a front license plate and the vehicle's rear window was tinted beyond the legal limit (Pet. Exs. 4, 5). The officer stopped the vehicle near 2628 Third Avenue and discovered that respondent had an active arrest warrant under docket number CR-701570-26CN (Pet. Exs. 4, 5). The officer placed respondent under arrest at the scene, searched respondent, and found respondent to be in possession of a firearm (Pet. Exs. 4, 5). The criminal court complaint, signed and sworn by Officer Segarra, stated that respondent had "in his custody and

control, in his waistband, one (1) black 9-millimeter Derringer firearm, serial number CT134134,” at approximately 11:45 a.m. on April 20, 2026, inside of 567 East 149 Street in the Bronx (Pet. Ex. 6). Respondent was arrested for criminal possession of a weapon in the second degree and other charges (Pet. Exs. 4, 10). Respondent was arraigned in Bronx County Criminal Court on April 21, 2026, and charged with criminal possession of a firearm and criminal possession of a weapon in the fourth degree (Pet. Exs. 6, 10). *See* Penal Law § 265.01-b, 265.01(1) (Lexis 2026). Respondent was indicted on those charges on June 5, 2026 (Pet. Ex. 10).

According to a repository inquiry from the New York State Division of Criminal Justice Services, respondent was previously convicted of attempted assault in the second degree on January 24, 2023, and menacing in the second degree with a weapon on January 21, 2025 (Pet. Ex. 10). More recently, respondent was arrested for criminal possession of a controlled substance in the seventh degree on April 1, 2026, for which a pre-arraignment warrant was issued under docket number CR-701570-26CN on April 15, 2026, and assault in the third degree on May 29, 2026 (*Id.*).

Respondent did not testify at the hearing and offered an unsigned character reference letter from his girlfriend (Resp. Ex. B). She has known respondent for about a year and described him as a safe driver and a compassionate person who strives to make a positive impact on others, despite having experienced many traumas in his own life (*Id.*).

To establish the first prong of the *Krimstock* Order, petitioner must prove both reasonable suspicion for the initial stop of the vehicle and probable cause for the resulting arrest. *See Police Dep’t v. Arthurs*, OATH Index No. 1261/19, mem. dec. at 2 (Jan. 30, 2019). A police officer may stop and approach an automobile “to enforce traffic regulations or when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime.” *People v. Robinson*, 97 N.Y.2d 341, 351 (2001).

The record reflects that Officer Segarra stopped respondent’s vehicle for traffic infractions on April 20, 2026, and then arrested respondent on an outstanding warrant. Officer Segarra contemporaneously observed respondent driving the vehicle with excessively tinted windows and no front license plate, and he observed that respondent had an active arrest

warrant under docket number CR-701570-26CN. The property clerk's invoice confirmed that the vehicle had only one license plate when vouchered, and the repository inquiry corroborated that a warrant had been issued under docket number CR-701570-26CN for respondent's arrest on April 15, 2026.

The evidence established that the police had a proper basis to stop respondent's vehicle for violations of sections 375(12) and 402(1) of the Vehicle and Traffic Law, which prohibit driving a vehicle with excessive window tinting and without license plates displayed on the front and rear of the vehicle, and probable cause to arrest respondent on the outstanding warrant. *See Police Dep't v. Walker*, OATH Index No. 1462/16, mem. dec. at 7 (Mar. 25, 2016) ("A traffic violation, such as excessively tinted windows, is sufficient to constitute a reasonable basis to stop respondent's vehicle."). Moreover, petitioner's un rebutted hearsay evidence was also adequate to show a lawful basis for the officer's search of respondent's waistband, from which a firearm was recovered, following his lawful arrest at the scene. *See Police Dep't v. Brantley*, OATH Index No. 2036/25, mem. dec. at 7 (July 17, 2025) (finding the un rebutted evidence sufficient to justify a police officer's warrantless search of a fanny pack worn around respondent's body conducted after respondent's arrest for reckless driving); *see also People v. Smith*, 59 N.Y.2d 454, 458 (1983) ("[P]robable cause to believe that the person arrested has committed a crime will justify the search of his person . . .").

The evidence also established that petitioner is likely to prevail in a forfeiture action since the seized vehicle was used as the instrumentality of a crime. *See Police Dep't v. Ricci*, OATH Index No. 1404/06, mem. dec. at 3 (Mar. 20, 2006); Admin. Code § 14-140(e)(1) (Lexis 2026). Respondent argued that there was no nexus between the vehicle and the alleged crime and noted that the criminal court complaint did not even reference the vehicle (ALJ Ex. 1). However, the criminal court complaint coupled with the arrest report showed that respondent possessed a firearm in the vehicle, and this evidence was sufficient to demonstrate that respondent used the vehicle as an instrumentality of a crime. *See Police Dep't v. Super*, OATH Index No. 656/12, mem. dec. at 3 (Oct. 21, 2011) (finding a likelihood that petitioner would prevail in a civil forfeiture action where the "respondent used the car to conceal, store, or

transport the handgun,” which had been recovered from a bag that respondent had taken out of his car).

To satisfy the *Krimstock* Order’s third prong, petitioner must show that release of the vehicle presents a heightened risk to public safety. *Police Dep’t v. Dookwa*, OATH Index No. 2395/14, mem. dec. at 17 (June 18, 2014); *Police Dep’t v. McFarland*, OATH Index No. 1124/04, mem. dec. at 3 (Feb. 24, 2004). This can be established by the circumstances of the offense or the respondent’s background. *Police Dep’t v. Mason*, OATH Index No. 282/21, mem. dec. at 3 (Sept. 15, 2020). Respondent was arrested and charged with criminal possession of a firearm. Possession of a firearm in a vehicle is the type of crime that may demonstrate a heightened risk to public safety. See *Police Dep’t v. Walker*, OATH Index No. 2079/24, mem. dec. at 5 (Mar. 5, 2024); *Police Dep’t v. Smith*, OATH Index No. 539/08, mem. dec. at 3-4 (Nov. 7, 2007); *Police Dep’t v. Chan*, OATH Index No. 197/08, mem. dec. at 4-5 (Aug. 14, 2007). However, this tribunal has never held that possession of a weapon is always sufficient to show a heightened risk to public safety and in limited circumstances, under an individualized case-by-case determination, has ordered vehicles released despite evidence that a driver or owner unlawfully possessed a weapon. See *Police Dep’t v. Phillip*, OATH Index No. 2683/24, mem. dec. at 4-5 (Apr. 10, 2024); *Police Dep’t v. Cuthbert*, OATH Index No. 356/24, mem. dec. at 6-7 (Sept. 8, 2023); *Police Dep’t v. Duncan*, OATH Index No. 183/23, mem. dec. at 5-8 (Aug. 19, 2022).

Respondent provided no explanation for the firearm in his possession. His girlfriend’s letter attesting to his good character was insufficient to overcome the heightened risk to public safety based on the circumstances of the firearm offense. See *Police Dep’t v. Williams*, OATH Index No. 3423/24, mem. dec. at 3, 8 (June 14, 2024) (finding that testimony regarding respondent’s need for the vehicle to work and care for his family and his non-violent character was insufficient to overcome the heightened risk to the public based on the circumstances of the firearm offense).

Order

Petitioner may retain respondent's vehicle pending a civil forfeiture proceeding.

Michael D. Turilli
Administrative Law Judge

June 25, 2026

Appearances:

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Attorney for Petitioner

The Bronx Defenders
Attorneys for Respondent
By: Steven T. Hasty, Esq.