2018 WL 3234200
City Court,
New York,
Rochester, Monroe County.

The PEOPLE of the State of New York, Plaintiff,
v.
Peter C. RIGGS, Defendant.

CR–02502–18
|
Decided June 29, 2018

Attorneys and Law Firms

Sandra J. Doorley, Monroe County District Attorney (Daniel E. Strollo, Assistant District Attorney, of counsel), for plaintiff.

Stephen J. Sercu, Esq., Rochester, for defendant.

Ellen M. Yacknin, J.

PROCEDURAL BACKGROUND

***1** Defendant Peter Riggs is charged with driving while intoxicated and the unsafe movement of a vehicle from a start position. At defendant's March 26, 2018 arraignment, the Assistant District Attorney served a notice required by NY C.P.L. § 710.30 on defense counsel stating that the People intended to introduce at trial statements made by defendant to Rochester Police Officer Joseph Bonacci. However, although Rochester Police Officer Mary Barnes' Supporting Deposition identified statements made by defendant to her, the Assistant District Attorney did not serve a 710.30 Notice regarding these statements.

In his April 17, 2018 omnibus motion, defendant moved to **suppress** the evidence of his intoxication on the ground that the police lacked probable cause in the first instance to stop the automobile he was driving. Defendant also moved for **suppression** of the statements "he allegedly made to *law enforcement officers*" (emphasis added). 4/17/18 Defendant's Attorney Affirmation, ¶ 28. To assess defendant's arguments, a combined probable cause and *Huntley* hearing was scheduled for May 23, 2018 and May 29, 2018.

On May 23rd, before the scheduled hearing began, defendant's attorney orally moved to withdraw his motion to **suppress** any statements that defendant made to Officer Barnes. He orally moved, instead, to preclude those statements on the ground that the Assistant District Attorney had failed to serve him with notice of such statements within fifteen days of arraignment, as required by NY C.P.L. § 710.30. The Assistant District Attorney opposed defense counsel's verbal preclusion motion, asserting that it was time-barred under CPL § 255.20, which requires all defense motions to be filed within 45 days of arraignment. According to the People, because 58 days had elapsed between defendant's March 26, 2018 arraignment and defense counsel's May 23, 2018 verbal preclusion motion, defendant's new motion was untimely. The Court reserved its decision on defendant's preclusion motion pending completion of the hearing.

FACTUAL FINDINGS

At about 2:34 a.m. on March 18, 2018, Rochester Police Officer Mary Barnes was traveling in her patrol car westbound on Monroe Avenue in Rochester, New York, approaching Meigs Street. At that time in the morning, the bars in that area had just closed, and several pedestrians were in the vicinity.

As Officer Barnes neared the intersection of Monroe Avenue and Meigs Street, the stop light at the intersection turned red. After the light changed, Officer Barnes heard the screeching of tires coming from a Subaru facing northbound that had been stopped at the intersection on Meigs Street before the light turned green. She then saw the car accelerate through the intersection.

Officer Barnes then turned on her emergency lights, turned right onto Meigs, and followed the car to execute a traffic stop. Although it did not stop immediately, the car came to a halt near 266 Meigs Street. When Officer Barnes approached the driver, who was later identified as defendant, she directed defendant to turn off his music so that she could hear him when they talked.

***2** At Officer Barnes' request, defendant produced his driver's license. In response to questions, defendant stated that he did not know why Officer Barnes had stopped him, that he had driven quickly because he was trying to move around another car, and that he was coming from work. While talking with defendant, Officer Barnes observed that defendant's eyes were bloodshot, watery, and glassy. For that reason, she asked defendant whether he had had anything to drink, to which defendant replied, "No."

Based on her observations, Officer Barnes called Police Officer Joseph Bonacci to continue the investigation to determine whether defendant was intoxicated. Officer Bonacci, who is trained and experienced in the detection of intoxication, arrived on the scene within a few minutes. After speaking with Officer Barnes, Officer Bonacci approached defendant, who was still in the car's driver's seat. In response to Officer Bonacci's questions, defendant stated that he was driving home from work.

As defendant spoke, Officer Bonacci smelled a strong odor of an alcoholic beverage coming from his breath, observed that defendant's eyes were bloodshot and watery, and noticed that defendant's face was flushed. Based on his observations, Officer Bonacci asked defendant whether he had had anything to drink. As he had stated earlier to Officer Barnes, defendant replied that he had not. However, at some unspecified time later, defendant told Officer Bonacci that he had consumed a couple of beers at a bar.

Based on his observations and training, Officer Bonacci asked defendant if he would agree to perform some field sobriety tests. Defendant replied, "Just arrest me." When Officer Bonacci asked defendant what his issue was, defendant stated that the tests were unfair.

Despite his expressed concerns, defendant eventually agreed to perform them. With respect to the horizontal gaze nystagmus test, defendant exhibited the lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and the onset of nystagmus at forty-five degrees. Defendant failed to perform the walk and turn test as instructed in that he swayed during the instruction phase, he stopped walking at some point before the test was finished, he failed to touch the heel of his foot with the toe of his other foot on at least one occasion, he stepped off the line on at least one occasion, and he raised his arms. With respect to the one-legged stand test, defendant swayed while balancing but otherwise completed the test as instructed. A pre-screen test demonstrated the presence of alcohol in defendant's system.

At that point, based on his observations, training, and experience, Officer Bonacci came to the opinion that defendant was intoxicated, and placed him under arrest for driving while intoxicated.

LEGAL DISCUSSION

I. Probable Cause to Stop Defendant's Vehicle

At a probable cause hearing, the People bear the initial burden of producing evidence that police had probable cause to stop defendant for an alleged traffic infraction, but the defendant then has the burden of showing, by a preponderance of the evidence, that the police did not have probable cause to stop him. *See People v. Baldwin*, 25 N.Y.2d 66, 70–71, 302 N.Y.S.2d 571, 250 N.E.2d 62 (1969). Defendant maintains that he has met his burden of showing, by a preponderance of the evidence, that the police officer lacked probable cause to stop his car for an alleged traffic infraction. *See People v. Guthrie*, 25 N.Y.3d 130, 8 N.Y.S.3d 237, 30 N.E.3d 880, *rearg. denied* 25 N.Y.3d 1191, 16 N.Y.S.3d 50, 37 N.E.3d 108 (2015). Thus, according to defendant, evidence of his intoxication and the statements he made to the police must be **suppressed**.

***3** The People argue that based on her observations, the police officer had probable cause to stop defendant's vehicle for violating NY Vehicle and Traffic Law § 1162 that provides, "No person shall move a vehicle which is stopped ... unless and until such movement can be made with reasonable safety." The officer testified that she stopped defendant's car solely because she heard defendant's automobile's tires screeching as it drove through the intersection from its stopped position, and saw the vehicle accelerate. She also testified that she believed that when defendant's car accelerated, it was going at an unreasonable speed. She acknowledged, however, that she was neither trained in the visual estimation of a motor vehicle's speed nor used an electronic speed detector. Given that every vehicle accelerates from a stopped position, that there was no evidence that defendant was driving in excess of the legal speed limit, that there was no evidence of any hazardous driving conditions, and that there was no evidence that the car was out of control, the Court does not credit the police officer's assertion that the car's speed through the intersection was unreasonable.

The People nonetheless rely on *People v. Petri*, 152 A.D.3d 1089, 59 N.Y.S.3d 584 (3rd Dep't), *lv. denied* 30 N.Y.3d 1021, 70 N.Y.S.3d 454, 93 N.E.3d 1218 (2017) to support their position that the police had the requisite probable cause to stop defendant's vehicle. In *Petri*, the police officer testified that while defendant's car was stopped

at a red light, he saw defendant engage in a "verbal and gestural 'interaction' with some of the pedestrians at the intersection. After the light turned green, he saw defendant's car make an immediate right turn from its stopped position, rapidly accelerate past "numerous" pedestrians who were within five to ten feet of his vehicle, and caused his tires to loudly squeal and spin for a protracted period of time. The police officer in *Petri* also testified that in his experience, he believed that defendant was not in control of his vehicle. Based on all the attendant circumstances, the *Petri* Court found that the police had probable cause to stop defendant's car for a violation of VTL § 1162. *See People v. Petri*, 152 A.D.3d at 1090–91, 59 N.Y.S.3d 584.

In contrast to the circumstances in *Petri*, the only credible evidence of defendant's conduct was that he started to drive from a stopped position so quickly that his tires screeched. While there were a few pedestrians in the area, there was no evidence that any pedestrians were in the crosswalk in front of defendant's car when it started or were otherwise at risk of being hit by defendant's car, that defendant was interacting with any of the pedestrians, that defendant's tires squealed or spun "for a protracted period of time," or that defendant's speed continued to accelerate as he drove beyond the intersection.

Like the *Petri* Court, other courts that have found sufficient probable cause to stop a vehicle for a violation of VTL § 1162 where a vehicle's tires screeched have relied on surrounding facts and circumstances in addition to the sound of the squealing tires. *See*, *e.g.*, *People v. Peffer*, 51 Misc.3d 1226(A), 2016 WL 3040530 (Albany City Ct. 2016) (probable cause to stop the vehicle existed where the car revved its engine loudly while stopped at the light, "peeled" through the wet and slick intersection, and continued to accelerate through intersection at an estimated 40 miles per hour in an 30 MPH zone); *U.S. v. Edwards*, 563 F.Supp.2d 977, 1001 (D. Minn. 2008), *aff'd U.S. v. Bowie*, 618 F.3d 802 (8th Cir. 2010), *cert. denied Bowie v. U.S.*, 562 U.S. 1157, 131 S.Ct. 954, 178 L.Ed.2d 787 (2011) (probable cause to stop the vehicle existed when car drove erratically and squealed its tires as it turned around several corners, and continued to drive erratically as police followed the car).

Conversely, the facts in this case are far more similar to the facts in *People v. Rebecca P.*, 37 Misc.3d 1233(A), 2012 WL 6582613 (Canandaigua City Ct. 2012). In that case, as in the case at bar, the police officer observed a vehicle that had been stopped a red light at an intersection, heard the vehicle "squeal[ ] its tires" when the light turned green, and saw the car "spe [e]d through the intersection." *People v. Rebecca P.*, 37 Misc.3d at *1. As in this case, there was no evidence that the vehicle exceeded the speed limit, or any specific evidence that the vehicle's movement was not reasonably safe, even though a civilian standing to the officer's left raised his arm and pointed to the vehicle. Based on those facts, the *Rebecca P.* Court held that the police officer lacked probable cause to stop the vehicle for a traffic violation. *See People v. Prado*, 2 Misc.3d 1002(A), 2004 WL 396488, * (Sup. Ct., N.Y. County 2004) (no probable cause existed to stop the car for "excessive speed").

***4** For the reasons discussed above, under all the circumstances, there was no articulable or credible evidence that defendant had committed a traffic infraction before he was stopped by the police. Accordingly, the police lacked probable cause to stop defendant's vehicle, and any evidence obtained by the police as a result of the traffic stop, including his statements to the police officer, are **suppressed**.

II. Preclusion of Defendant's Statements to Police Officer Barnes

Although he initially moved for **suppression** of defendants' statements to the "law enforcement *officers*" (emphasis added), defendant's attorney verbally moved, on May 23, 2018, to substitute his **suppression** motion with a preclusion motion with respect to defendant's statements to Police Officer Barnes. Because of the Court's decision to **suppress** all evidence obtained by the police as a result of the traffic stop, it is unnecessary to decide whether defendant is entitled to preclusion of his statements to Officer Barnes. [1]

CONCLUSION

For the reasons discussed above, defendant's motion to **suppress** evidence obtained by the police as a result of the traffic stop is granted.

SO ORDERED.

June 29, 2018,

nunc pro tunc to

June 5, 2018 [2]

All Citations

--- N.Y.S.3d ----, 2018 WL 3234200, 2018 N.Y. Slip Op. 28201

Footnotes

1 Whether defendant would have been entitled to preclusion of such statements is questionable. Although defendant's attorney received a 710.30 Notice only with respect to defendant's statements to Officer Bonacci, he was aware of defendant's statements to Officer Barnes that were set forth in her supporting deposition that he received at defendant's March 26, 2018 arraignment. As noted above, defendant's omnibus motion moved to **suppress** defendant's statements to "law enforcement officers." Defendant's attorney did not move to substitute his **suppression** motion with a preclusion motion until several days beyond NY C.P.L. § 255.20's forty-five day time limit for motions. As emphasized in *People v. St. Martine*, 160 A.D.2d 35, 40, 559 N.Y.S.2d 697 (1st Dep't), *app. denied* 76 N.Y.2d 990, 563 N.Y.S.2d 779, 565 N.E.2d 528 (1990), "The exemption in CPL 710.30(3) provides that if a defendant, notwithstanding the absence of appropriate notice, somehow becomes aware of the existence of a particular statement and moves for its **suppression**, the People will not be precluded from introducing this statement in the event of a favorable court ruling merely because of the technical lack of timely notice."

2 The Court's decision in this matter was delivered orally from the bench on June 5, 2018.