2018 WL 5020673
City Court, New York,
Middletown, Orange County.

The PEOPLE of the State of New York, Plaintiff,
v.
Jovanie DEL RIO, Defendant.

CR-1443-18
|
Decided on October 9, 2018

Synopsis

Background: Defendant who was charged with two counts of driving while intoxicated and two traffic violations moved to **suppress** evidence, specifically defendant's own statements and the results of field sobriety and chemical tests, primarily arguing that the stop of his automobile was improper.

Holdings: The City Court, Steven W. Brockett, J., held that:

[1] police officer's observations did not provide reasonable suspicion to believe that defendant was driving while under the influence of alcohol;

[2] police officer's mistaken belief that defendant had committed a traffic violation was not objectively reasonable; and

[3] traffic stop of defendant by police officer was not a proper exercise of community caretaking function of police.

Motion granted.

West Headnotes (9)

[1] Criminal Law

Generally, the police may lawfully stop a moving vehicle when they have probable cause to believe that the driver has committed a traffic infraction or have reasonable suspicion that the driver or occupants have committed or are about to commit a crime. U.S. Const. Amend. 4.

Cases that cite this headnote

[2] Criminal Law

Although the right to stop a vehicle is generally analogous to the right to stop a pedestrian, police/motorist encounters must be distinguished from police/pedestrian encounters when police are operating on less than reasonable suspicion because the obvious impact of stopping the progress of an automobile is more intrusive than the minimal intrusion involved in stopping a pedestrian, and constitutes at least a limited seizure subject to constitutional limitations. U.S. Const. Amend. 4.

Cases that cite this headnote

[3] Criminal Law

Police officer's alleged observations of defendant's vehicle swerving within its own lane and crossing over solid white fog line on a controlled access highway did not provide the officer with reasonable suspicion to believe that defendant was operating the vehicle while under the influence of alcohol, and therefore officer lacked a lawful basis to support stop of defendant's vehicle; observations of swerving and crossing fog line were subject to innocent explanation and did not provide probable cause or reasonable suspicion justifying the stop, and it was undisputed that the road on which defendant was driving was not a controlled access highway, and therefore crossing the fog line was not a traffic violation. U.S. Const. Amend. 4; N.Y. Highway Law § 3(2); N.Y. Vehicle and Traffic Law §§ 1128(d), 1130, 1131.

Cases that cite this headnote

[4] Criminal Law

The crossing of a solid white line in a vehicle is discouraged, but not prohibited and, thus, such a marking does not constitute an indication that crossing same would be especially hazardous in the context of the offense of driving across hazardous markings. N.Y. Vehicle and Traffic Law § 1128(d).

Cases that cite this headnote

[5] Criminal Law

Police officer's mistaken belief that defendant committed a traffic violation by crossing over the fog line on a controlled access highway was not objectively reasonable; road in question was not a controlled access highway and there was no basis for an experienced officer to believe that it was, due to the fact that the road was lined with multiple retail establishments, was controlled by traffic lights, and had intersecting cross streets, clearly falling outside the clear and unambiguous statutory definition of a controlled access highway, and officer offered no testimony whatsoever at trial to support argument that the mistake was reasonable. N.Y. Highway Law § 3(2); N.Y. Vehicle and Traffic Law § 1131.

Cases that cite this headnote

[6] Criminal Law

Under both the United States and New York State Constitutions, a police officer's objectively reasonable belief that he or she has observed the defendant commit a traffic infraction will support a traffic stop, even if the officer's belief is mistaken. U.S. Const. Amend. 4; McKinney's Const. Art. 1, § 12.

Cases that cite this headnote

[7] Criminal Law

Traffic stop of defendant by police officer was not a proper exercise of the community caretaking function of the police, which allows police to perform certain actions without probable cause in furtherance of public safety, where stop was based on officer's erroneous belief that defendant had committed a traffic violation and not any concern for defendant's safety or need for assistance, or to warn defendant of a hazard on the road. U.S. Const. Amend. 4; N.Y. Highway Law § 3(2); N.Y. Vehicle and Traffic Law § 1131.

Cases that cite this headnote

[8] Searches and Seizures

The community caretaking function permits the police to impound a parked vehicle without probable cause when such action is pursuant to departmental regulations and when necessary to protect public safety or the parked vehicle itself. U.S. Const. Amend. 4.

Cases that cite this headnote

[9] Municipal Corporations

To fall within the community caretaking function exception to the probable cause requirement for a stop, a police action must be totally divorced from the detection, investigation, or acquisition of evidence of criminal conduct. U.S. Const. Amend. 4.

Cases that cite this headnote

Attorneys and Law Firms

The People were represented by ADA Joseph Leathem Leahy;

Defendant was represented by Michael Collado, Esq., Newburgh

Opinion

Steven W. Brockett, J.

***1** The Defendant, charged with two counts of driving while intoxicated (VTL § 1192(2) and 1192 § (3)) and two traffic infractions, moves to **suppress** evidence, primarily arguing that the stop of his automobile was improper. Following a **suppression** hearing, I make the following determinations:

Findings of Fact

The arresting officer, a nine-year veteran of the Middletown police force, was the only witness at the hearing. The officer testified that on March 31, 2018 at about 3:40 a.m. he was working with a partner on DWI enforcement patrol on Dolson Avenue in Middletown. Dolson Avenue is a commercial corridor with two lanes of traffic in each direction and a center lane for turning in both directions. While on Dolson Avenue, the officer observed a car traveling about 300 feet ahead of him that was "swerving within its own lane." Half the vehicle slowly drifted over a solid white fog line before returning to its driving lane. The officer testified that the vehicle had swerved several times, although he acknowledged that the DWI bill of particulars he prepared that night indicated only that he saw the vehicle "swerve" within its lane. The officer testified that his observations of the swerving and crossing of the fog line lasted "just a few seconds" and that the vehicle never crossed into another lane of travel. He also acknowledged that there was another vehicle traveling between the swerving car and his patrol vehicle. After passing the Campbell Plaza shopping center and a gas station, the car turned right at an intersection onto County Route 78. Shortly thereafter, the officer stopped the vehicle and found the defendant to be the driver. The defendant had an odor of alcohol on his breath and glassy, bloodshot eyes. The defendant subsequently failed two of three field sobriety tests conducted in the parking lot of a pizzeria. The defendant was arrested and following a chemical breath analysis at the police station was charged with two counts of driving while intoxicated. The officer also charged the defendant with driving across hazard markings (VTL § 1128(d)) and driving on the shoulder of a controlled access highway (VTL § 1131). I find that the officer stopped the defendant's vehicle because he believed he had observed violations of the Vehicle and Traffic Law.

Conclusions of Law

[1] **[2]** Generally, the police may lawfully stop a moving vehicle when they have probable cause to believe that the driver has committed a traffic infraction or have reasonable suspicion that the driver or occupants have committed or are about to commit a crime. *People v. Guthrie*, 25 N.Y.3d 130, 133, 8 N.Y.S.3d 237, 30 N.E.3d 880 (2015); *People v. Spencer*, 84 N.Y.2d 749, 752, 622 N.Y.S.2d 483, 646 N.E.2d 785 (1995); *People v. Robinson*, 97 N.Y.2d 341, 354, 741 N.Y.S.2d 147, 767 N.E.2d 638 (2001); *People v. Clayton,* 61 Misc. 3d 129(A), 2018 Slip Op. 51388(U), 2018 WL 4778610 (App. Term, 9th & 10th Jud. Dist.2018).

> Although the right to stop a vehicle is generally analogous to the right to stop a pedestrian, police/motorist encounters must be distinguished from police/pedestrian encounters when the police are operating on less than reasonable suspicion. This is because "the obvious impact of stopping the progress of an automobile is more intrusive than the minimal intrusion involved in stopping a pedestrian" and constitutes "at least a limited seizure subject to constitutional limitations."

***2** *People v. Spencer* at 752, 622 N.Y.S.2d 483, 646 N.E.2d 785 quoting *People v. John BB*, 56 N.Y.2d 482, 487, 453 N.Y.S.2d 158, 438 N.E.2d 864 (1982).

The defendant argues that the traffic stop was unlawful because the officer did not observe any violations of the Vehicle and Traffic Law and did not have any reasonable suspicion that the defendant had committed a crime at the time of the stop.

The District Attorney's Office claims three bases to support the police officer's stop of the auto: that the operation of the auto provided the police with reasonable suspicion that the defendant drove in violation of VTL § 1192; that the officer's belief that Dolson Avenue was a controlled access highway, though erroneous, was reasonable; and that the stop of the auto was a proper exercise of the community caretaking function of the police.

I find that the facts surrounding the stop of the vehicle fail to support the People's arguments, and I grant the defendant's motion to **suppress**.

A.

[3] Despite the issuance of two simplified traffic informations by the arresting officer, the District Attorney does not argue that the officer had probable cause to believe that the defendant had committed the charged traffic infractions. Rather, the People argue that at the time of the stop the officer possessed reasonable suspicion that the defendant was operating the motor vehicle while under the influence of alcohol.

[4] The officer's observation that the defendant's vehicle drifted over the solid white line one time does not establish the traffic infraction of driving across hazard markings in violation of VTL § 1128(d). "The crossing of a solid white line is discouraged, but not prohibited and, thus, such a marking does not constitute an indication that crossing same would be 'especially hazardous.' " *People v. Shulman*, 14 Misc. 3d 129(A), 2006 WL 3858337 (App. Term, 9th & 10th Jud. Dist., 2006). *See also People v. Bordeau,* 21 Misc. 3d 1121(A), 2008 WL 4700522 (Essex County Ct., 2008) (same).

Similarly, the officer's observations fail to establish that the defendant was driving on the shoulder of a controlled access highway in violation of VTL § 1131. Controlled access highways are divided highways separated by an intervening space or physical barrier where access is limited to certain designated junctions with other highways. *See* Highway Law § 3(2); Vehicle and Traffic Law § 1130. It is undisputed that Dolson Avenue is not a controlled access highway and that the defendant's operation of his vehicle did not violate VTL § 1131. *Cf. People v. Parris*, 26 A.D.3d 393, 809 N.Y.S.2d 176 (2d Dept., 2006) (crossing onto shoulder of controlled access highway justified stop of auto); *People v. Hanson,* 5 Misc. 3d 67, 785 N.Y.S.2d 825 (App. Term, 9th & 10th Jud. Dist., 2004) (same).

The observations of the vehicle did not provide the officer with reasonable suspicion to believe that the defendant was operating the vehicle while under the influence of alcohol. From three hundred feet away and with another auto between himself and the defendant's vehicle, the officer observed the defendant swerve within his own lane and cross the fog line once over a period of several seconds. These observations are easily subject to innocent explanation and do not provide probable cause or reasonable suspicion justifying the stop. While it cannot be said that minor swerving within a lane or fog line encroachment could never justify an automobile stop, *see People v. Davis,* 58 A.D.3d 896, 898, 870 N.Y.S.2d 602 (3d Dept., 2009), I find that under the facts presented here the officer lacked a lawful basis to support the stop. *See also*, *People v. Kern*, 38 Misc. 3d 1217(A), 2013 WL 336683 (Sheridan Town Ct., 2013) (crossing fog line does not justify stop); *People v. Luster,* 35 Misc. 3d 735(A), 946 N.Y.S.2d 407 (Suffolk Co. Dist. Ct., 2012) (same); *People v. Fisher,* 20 Misc. 3d 1136(A), 2008 WL 3865212 (Wappingers Town Ct., 2008) (same). *People v. Bordeau,* 21 Misc. 3d 1121(A), 2008 WL 4700522 (Essex Co. Ct., 2008) (same). *People v. Teall,* 32 Misc. 3d 1223(A), 2011 WL 3198874 (Rochester City Ct., 2011) (vehicle swerving within its own lane does not justify stop); *People v. Lochan,* 23 Misc. 3d 1106(A), 2009 WL 944246 (Crim. Ct., N.Y. Co., 2009) (same); *People v. Culcross*, 184 Misc. 2d 67, 706 N.Y.S.2d 605 (Monroe Co. Ct., 2000) (same).

3 *B.

[5] The People next argue that the police officer's belief that the defendant had violated VTL § 1131 by crossing over the fog line, while mistaken, was reasonable and the stop was therefore permissible.

[6] Under both the United States and New York State Constitutions, a police officer's objectively reasonable belief that he or she has observed the defendant commit a traffic infraction will support a traffic stop, even if the officer's belief is mistaken. *Heien v. North Carolina,* 574 U.S. ——, 135 S.Ct. 530, 536, 190 L.Ed.2d 475 (2014); *People v. Guthrie*, 25 N.Y.3d 130, 132, 8 N.Y.S.3d 237, 30 N.E.3d 880 (2015). In *Guthrie,* the Court of Appeals held that a police officer's objectively reasonable, but mistaken, belief that a defendant had violated VTL § 1172(a) by failing to stop at a stop sign permitted the stop of the auto. 25 N.Y.3d at 140, 8 N.Y.S.3d 237, 30 N.E.3d 880. In *Guthrie,* the defendant was not, if fact, guilty of the stop sign infraction because the stop sign, located in a private parking lot, had not been registered with the local municipality as required by VTL § 1100(b). *Id.* at 133, 8 N.Y.S.3d 237, 30 N.E.3d 880. But the Court of Appeals ruled that because the officer could not be expected to know the registration status of every stop sign in every city, town and village, the officer's mistake was objectively reasonable. *Id.* at 136, 8 N.Y.S.3d 237, 30 N.E.3d 880. Similarly, in *People v. Estrella,* 10 N.Y.3d 945, 862 N.Y.S.2d 857, 893 N.E.2d 134 (2008), because an officer's mistake was objectively reasonable, the Court of Appeals

upheld a car stop. There, the officer stopped an auto that had windows that were excessively tinted in violation of VTL § 375(12-a)(b). Such tinting, however, was not illegal in Georgia, where the vehicle was registered. The *Estrella* Court affirmed the Fourth Department's finding that "it is unreasonable to require that police officers be familiar with the equipment requirement laws of every state, and presumably other countries, in order to effect a proper stop." *Id.* at 135, 8 N.Y.S.3d 237, 30 N.E.3d 880, quoting *People v. Estrella,* 48 A.D.3d 1283, 1285, 851 N.Y.S.2d 793 (4th Dept. 2008).

The Court of Appeals in *Guthrie*, however, has signaled that police officers in New York State are responsible for knowing the New York State Vehicle and Traffic Law:

> In *Estrella,* the arresting officer would have been expected to know that Vehicle and Traffic Law § 250(1) provides an exemption from this state's registration and equipment requirements for out-of-state vehicles that comply with the requirements of the state in which they are registered. We concluded, however, that because the officer was not chargeable with knowledge of the legal registration and equipment requirements of Georgia, the stop was justified based upon the officer's reasonable belief that the defendant had violated the Vehicle and Traffic Law. Similarly here, we are not saying that it would have been objectively reasonable for the arresting officer to have claimed ignorance of the requirement in Vehicle and Traffic Law § 1100(b) that a stop sign in a parking lot be registered to be valid. We are saying that the stop was nonetheless constitutionally justified because the officer was not chargeable with knowing each and every stop sign that was registered under the Newark Village Code.

***4** 25 N.Y.3d at 136, 8 N.Y.S.3d 237, 30 N.E.3d 880 (citation omitted). *See also People v. Paniccia,* 61 Misc. 3d 397, 82 N.Y.S.3d 859 (Gloversville City Ct. 2018) (officer's mistake regarding VTL § 375(2)(a)(3) was not objectively reasonable). *But see People v. Abrucci-Kohan,* 52 Misc. 3d 919, 37 N.Y.S.3d 816 (Monroe Town Ct., 2016) (officer's mistake regarding VTL § 375(a)(3) was objectively reasonable).

In the instant case, the police officer's mistake regarding the Vehicle and Traffic Law cannot be found to be objectively reasonable. There was no basis for this experienced officer to believe that Dolson Avenue was a controlled access highway. Dolson Avene, lined with multiple retail establishments, controlled by traffic lights and with intersecting cross streets clearly falls outside the clear and unambiguous definition set forth in VTL§ 1131. *See also,* Highway Law § 3(2). *Cf. Heien v. North Carolina,* 574 U.S. ——, 135 S.Ct. 530 at 540, 190 L.Ed.2d 475 (2014) (North Carolina traffic statute unclear and susceptible to multiple interpretations). At the hearing, the officer offered no testimony whatsoever supporting the People's argument that the mistake was reasonable. Rather, the officer's belief as to the law, while perhaps made in good faith, was merely wrong. Expanding the category of "objectively reasonable" mistakes to encompass the officer's decision here would permit the exception to swallow up the general rule and would provide a good faith exception to the exclusionary rule—a result specifically rejected in *Guthrie*. 25 N.Y.3d at 134, n 2, 8 N.Y.S.3d 237, 30 N.E.3d 880. The officer in this case is not expected to know the traffic laws of foreign jurisdictions or the enactments of all of New York's many local municipalities. He must, however, know the Vehicle and Traffic Law of New York State. His failure to do so was not objectively reasonable.

C.

[7] The People's argument that the traffic stop was a proper exercise of the community caretaking function of the police is without merit.

[8] **[9]** The community caretaking function permits the police to impound a parked vehicle without probable cause when such action is pursuant to departmental regulations and when necessary to protect public safety or the parked vehicle itself. *People v. Tardi,* 28 N.Y.3d 1077, 1078, 44 N.Y.S.3d 366, 66 N.E.3d 1084 (2016). To fall within the community caretaking function, the police action must be "totally divorced from the detection, investigation, or acquisition of evidence" of criminal conduct. *Cady v. Dombrowski,* 413 U.S. 433, 441, 93

S.Ct. 2523, 37 L.Ed.2d 706 (1973). While under certain circumstances the community caretaking exception to the probable cause requirement may be expanded to permit the stop of a moving auto, *see People v. Fenti,* 57 Misc. 3d 471, 62 N.Y.S.3d 887 (Penfield Town Ct., 2017) and cases cited therein, the facts in the present case do not support such an expansion. The People elicited no testimony at the hearing that provided any basis for the police to believe that the defendant was in need of assistance prior to the stop of the car. The minor swerving of the defendant's vehicle is readily susceptible to innocent explanation and not clearly indicative of motorist distress. There was no proof offered that the stop was based on any concern for the safety of the driver. *Cf., e.g.*, *United States v. Touzel*, 409 F.Supp.2d 511 (D. VT 2006) (stop permissible where officer's purpose was to warn driver of downed power lines). In the only New York State case to uphold the stop of a moving vehicle based on the community caretaking function of the police, the Court required "specific and articuable facts which support a finding that the officer reasonably concluded that the motorist was in need of assistance." *Fenti*, 57 Misc. 3d at 478, 62 N.Y.S.3d 887. As I have determined that the stop in this case was based on the officer's error regarding the Vehicle and Traffic Law, the community caretaking exception does not excuse this stop made without probable cause.

***5** For the above reasons, the defendant's motion to **suppress** is granted. The defendant's statements and the results of field sobriety and chemical tests are **suppressed** under the fruit of the poisonous tree doctrine. *See People v. Hanson*, 5 Misc. 3d 67, 68, 785 N.Y.S.2d 825 (App. Term, 9th & 10th Jud. Dist. 2004).

All Citations

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