

**People v James**

2010 NY Slip Op 34047(U)

June 24, 2010

County Court, Albany County

Docket Number: 19-2957

Judge: Stephen W. Herrick

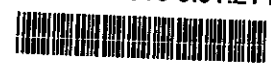
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STATE OF NEW YORK  
COUNTY OF ALBANY COUNTY COURT

Albany County Clerk  
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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION AND ORDER  
Ind # 19-2957

MAURICE JAMES,  
Defendant.

APPEARANCES

For the People

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Albany County District Attorney  
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Assistant District Attorney

For the Defendant

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TIMOTHY BERRY  
Assistant Public Defender

HERRICK, J. Defendant is charged in a five count indictment with one count each of Criminal Possession of a Controlled Substance in the Third and Fourth Degrees, in violation of Penal Law, sections 220.16(1) and 220.09(1), Class B and C felonies, respectively; one count of Aggravated Unlicensed Operator in the Third Degree, in violation of Vehicle and

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Traffic Law, section 511(1)(a), a misdemeanor; one count of Reckless Driving, in violation of Vehicle and Traffic Law, section 1212, a misdemeanor and one count of Unlawfully Fleeing a Police Officer in a Motor Vehicle in the Third Degree, in violation of Penal Law, section 270.75, a Class A misdemeanor.

Pursuant to section 710.60 of the Criminal Procedure Law, defendant moves for an order suppressing oral statements recorded on video tape at the time of his arrest. Defendant also challenges the sufficiency of the probable cause resulting in his arrest.

A pre-trial Dunaway-Huntley hearing was held before the Court on June 15, 2010. Testifying for the People were City of Albany Police Department Officer Nicholas Abrams and New York State Trooper Gianni Bove. The defense did not call any witnesses.

Based upon the credible testimony of record, the Court finds the following facts.

#### FINDINGS OF FACT

As part of Operation Impact, a joint venture involving members of the Albany Police Department and the New York State Police, at approximately 11:26 PM on December 19, 2009, City of Albany Police Officers Nicholas Abrams and Daniel Meehan were conducting surveillance on a residence located on Hudson Avenue and Partridge Street, believed to be a location for the purchase of illegal narcotics.

The officers observed the defendant, Maurice James, arrive at the location in a Ford Taurus and enter the suspect premises. He exited five minutes later, and when driving from the location, failed to signal when pulling away from the curb.

Officer Abrams radioed to New York State Trooper Gianni Bove and Albany Police Officer Daniel Biette who were staked out in a vehicle nearby. Officer Abrams reported

the traffic violation and requested that Trooper Bove and Officer Biette effect a traffic stop. They did so, pulling the defendant over at Partridge and Benson Streets.

As Trooper Bove approached the defendant, he observed the defendant agitated and going through the pockets of his jacket. The defendant was ordered to turn off the car and put his hands on the steering wheel. In response, the defendant put the car in drive and took off.

A chase ensued. Trooper Bove followed the vehicle for a few blocks and then lost him in the neighborhood of Clinton Avenue and Manning Boulevard. Officers Abrams and Meehan, responding to a call from Trooper Bove, traveled to the area and located defendant's vehicle, within minutes, parked at the Bleeker Terrace Apartments, a few blocks away on Manning Boulevard.

Albany Police Officer Christopher Cornell, who responded to the radio dispatch, arrived at Bleeker Terrace. He located the Ford Taurus and began to secure it. A citizen, who wished to remain anonymous, approached Officer Cornell and told him that he had seen the defendant put something on the window sill of the south window outside apartment unit D-50. Officer Cornell investigated and found two bags, one filled with a green leafy substance and one filled with a white substance. Field test later confirmed the substances as marijuana and crack cocaine, respectively.

The defendant, observed nearby, was taken into custody. He made several spontaneous statements that were recorded on video tape.

The defendant was subsequently indicted as set forth above.

#### CONCLUSIONS OF LAW

The defendant has challenged the sufficiency of the probable cause resulting in his

arrest. The Court notes that a police officer may arrest a person for "... (a) crime when he has reasonable cause to believe that such a person has committed (a) crime whether in his presence or otherwise." Criminal Procedure Law, section 140.10(1)(b). Acting as a prudent person would in believing that an offense has been committed, a police officer is allowed to draw upon the entirety of his or her experience and knowledge as a criminal investigator in determining whether probable cause for arrest exists. People v. Hill 146 AD2d 823 (Third Dept.) lv.den 73 NY2d 1016. The evidence of criminality need not rise to the level necessary to support a criminal conviction or even be sufficient to establish a prima facie case. It need merely appear more probable than not that crime has taken place and that the one arrested is its perpetrator. Id.

Where police acting in their criminal law enforcement capacity initiate an encounter with a private citizen, the propriety of the encounter must be assessed under the four tiered analytical framework articulated by the Court of Appeals in People v. DeBour<sup>1</sup> and reaffirmed in People v. Hollman<sup>2</sup>. People v. McIntosh 96 NY2d 521. In DeBour, the Court of Appeals recognized that in analyzing the propriety of police conduct, the Court must weigh the interference it entails against the precipitating and attendant conditions. People v. DeBour, supra. "By this approach, various intensities of police action are justifiable as the precipitating and attendant factors increase in weight and competence." Id., at 233. "If a police officer seeks simply to request information from an individual, that request must be supported by an objective, credible reason, not necessarily indicative of criminality. The common-law right of inquiry, a wholly separate level of contact, is 'activated by a founded suspicion that criminal activity is

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<sup>1</sup>40 NY2d 210

<sup>2</sup>79 NY2d 181

afoot and permits a somewhat greater intrusion.’ Where a police officer has reasonable suspicion that a particular person was involved in a felony or misdemeanor, the officer is authorized to forcibly stop and detain that person. Finally where the officer has probable cause to believe that a person has committed a crime, an arrest is authorized.” People v. McIntosh, *supra.*, citing People v. Hollman, *supra.*, and People v. DeBour, *supra.*

The Court of Appeals has drawn a distinction regarding police encounters with motorists as opposed to pedestrians, holding that other than legitimate traffic stops and sanctioned spot checks, the police have no authority to stop a moving vehicle on less than reasonable suspicion. People v. Spencer 84 NY2d 749.

In the present matter the Officers Abrams and Meehan’s observation of the defendant pulling away from the curb without using a signal provided a legal basis for the stop. The officers, were, therefore, authorized to pull the vehicle to the side of the road and issue a traffic summons. People v. Ingle 36 NY2d 413.

The Court further finds that the stop of the defendant by Trooper Bove and Officer Biette was permitted by the “fellow officer rule”. The fellow officer rule provides that even if an arresting officer lacks personal knowledge sufficient to establish probable cause, the arrest will be lawful if the officer, “acts upon the direction of or as a result of communication with ... a fellow officer... provided that the police as a whole were in possession of information sufficient to constitute probable cause to make an arrest.” People v. Ramirez-Portoreal 88 NY2d 99, 113. In the present matter, the reliable information possessed by Officers Abrams and Meehan provided a basis to stop the defendant’s vehicle. Under the fellow officer rule, that probable cause was transferred to Trooper Bove and Officer Biette and the stop of the defendant’s vehicle

was, therefore, supported by the requisite probable cause.

The Court finds that the escalating police responses were reasonably related in scope and intensity to the developing circumstances. First, the defendant was observed committing a traffic violation. Once pulled over, the defendant behaved suspiciously and failed to follow initial instruction. He then fled, providing probable cause for his arrest.

The Court finds no issue with the seizure of the narcotics from the window sill as the defendant voluntarily abandoned the property and that the abandonment did not result from any illegal police conduct. People v. Sanchez 248 AD2d 306 (First Dept.).

Likewise, defendant's motion to suppress the oral statements is denied. The Court finds that the defendant was in custody at the time the statements were made. See, People v. Yuki 25 NY2d 585. However, the oral statement made by the defendant, prior to Miranda, is admissible as the police "...are not required to take affirmative steps, by gag or otherwise, to prevent a talkative person in custody from making a ... statement." People v. Rivers 56 NY2d 476, 479.

Here, the defendant's statements were not the product of custodial interrogation. People v. Burnett 228 AD2d 788 (Third Dept.). The statements were spontaneously volunteered and are, therefore, admissible. Id. The Court will conduct an audibility hearing with regard to the recorded statements.

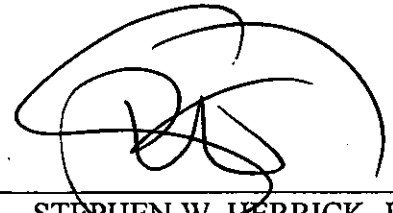
Based upon the foregoing, defendant's motion is, in all respects, denied.

The Court has considered defendant's remaining arguments and finds them to be

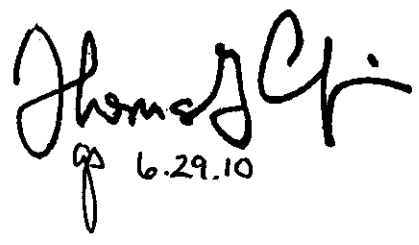
without merit.

This memorandum shall constitute the decision and order of the Court.

Dated: June 24, 2010  
Albany, New York



STEPHEN W. HERRICK, JCC



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