

People v Das

2014 NY Slip Op 33172(U)

December 5, 2014

Supreme Court, Seneca County

Docket Number: 48044

Judge: Dennis F. Bender

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT
COUNTY OF SENECA STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND
ORDER
Index No. 48044

-against

SUDIPTA S. DAS,

Defendant

APPEARANCES: Sudipta S. Das, pro se

 Hon. Barry Porsch
 Seneca County District Attorney

BENDER, J.

The defendant, Sudipta S. Das, appeals from a Judgment of the Junius Town Court convicting him after a non-jury trial of Speeding (V&T 1180(b)). The basis for the defendant's appeal is that he felt that the Court did not have any interest in listening and analyzing the case; that he should not have needed to produce his driving abstract; that he believed the radar utilized by the police officer may have picked up another vehicle near the defendant's vehicle, "probably moving at a higher speed"; and that a portion of the transcript did not reflect testimony by the officer in responding to the defendant's question why the officer didn't just u-turn and issue him a traffic ticket on Route 318, to which the officer allegedly responded "I did not have wings", as well as other errors in the transcript such as the defendant testifying that he was going to Waterloo Mall and the transcriber typing it up as "going to water the lawn". The defendant seeks a fair and unbiased judgment from this Court.

In response to the brief submitted by the defendant, the People, through District Attorney, Barry L. Porsch, submits that negotiations occurring at the pre-trial settlement conferences are not

relevant to the issue of guilt or innocence at trial; that the verdict is supported by sufficient evidence and is not contrary to the weight of the evidence; that the trial transcript is sufficient for appellate review even if one gives the defendant the benefit of the doubt as to the purported inaccuracies he alleges; and the defendant's reference to a matter outside of the record of appeal should not be considered to wit, a letter signed by Dipsikha Das that was included with the defendant's brief.


First, the last contention by the People is correct. This Court is limited to reviewing only the record from below and since the letter from Dipsikha Das was not part of that record, the same cannot and will not be considered by this Court.

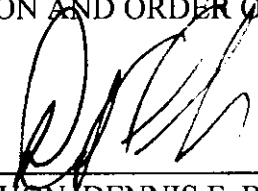
Secondly, the Court concurs that the trial's transcript is sufficient for appellate review. The defendant was charged with speeding to wit, going 69 mph in a 55 mph zone. The charge was supported by the testimony of Officer MacCheyne. Deputy MacCheyne testified that he was traveling westbound on State Route 318 in the Town of Junius on September 16, 2013 and that he estimated the speed of the defendant's vehicle going 69 mph. He stated that he was also using a radar unit to wit, a Custom Golden Eagle 2, and that the radar confirmed 69 mph (transcript pages 5-7). The Deputy testified that he was officially trained and was state certified on that model of radar and offered his certification for the radar operator course and further gave testimony concerning his experience and proper calibration of the radar equipment (transcript pages 5-7). Based upon that presentation, sufficient proof was before the trial court to support the speeding conviction. Connors v New York State Department of Motor Vehicles 81 A.D.3d 479 (1st Dept, 2011); Stamos v Appeals Board of the New York State Department of Motor Vehicles, 309 A.D.2d 572 (1st Dept, 2003), lv denied 1 NY 3rd 505 (2003), see also People v Stephens 52 Misc.2d 1070 (Yates County Court, 1967).

In his defense, the defendant testified that he honestly believed his speed did not exceed 60 mph, and that it is a matter of principle that he submits this appeal today. While the Court does not doubt the defendant's sincerity, a review of the transcript shows sufficient evidence was presented to support the conviction for speeding. Regarding credibility determinations, the Court is obliged to accord great deference to the trial court justice, as he was the one who directly saw and heard the witnesses. People v Scott, 29 A.D. 3d 1025 (3rd Dept, 2006). This Court further finds that the presiding justice was attentive to the issues at hand and there is nothing to indicate he did not give the defendant herein a fair and impartial trial.

The appeal is in all respects denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

DATED:  5 day of December, 2014



HON. DENNIS F. BENDER, JCC