

People v McDonald
2016 NY Slip Op 33011(U)
September 13, 2016
Supreme Court, Monroe County
Docket Number: 2015-1009
Judge: Joanne M. Winslow
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STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment #2015-1009

v.

ROBERT GREGORY MCDONALD,

Defendant.

15/11721

APPEARANCES

For the People: SANDRA DOORLEY, ESQ.
Monroe County District Attorney
Darren Pilato, Esq., of Counsel
47 South Fitzhugh Street, Suite 832
Rochester, New York 14614

For the Defendant: TIMOTHY P. DONAHER, ESQ.
Monroe County Public Defender
Jean Caputo, Esq., of Counsel
10 North Fitzhugh Street,
Rochester, New York 14614

DECISION AND ORDER

JOANNE M. WINSLOW, J.

Defendant is charged, by Indictment Number 2015-1009 with Driving While Intoxicated in violation of Section 1192, Subdivision 3 and Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree, in violation of Section 511, Subdivision 3(a)(i) of the Vehicle and Traffic Law of the State of New York. Defendant is further accused, by Special Information, of having been previously convicted of the crime of Driving While Intoxicated, in violation of Section 1192, Subdivision 3 and the violation of Driving While Ability Impaired, in violation of the Vehicle and Traffic Law of the State of New York. Defendant moved to suppress evidence on the ground that he was unlawfully arrested without probable cause. The People oppose suppression. The Court conducted a suppression hearing August 10, 2016.

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Having had an opportunity to observe the demeanor and evaluate the credibility of the two witnesses who testified, one of which was the Defendant, Robert Gregory McDonald, and having reviewed and considered all of the evidence presented at the suppression hearing, as well as the arguments raised by the respective parties, the Court finds as follows:

FINDINGS OF FACT

Sergeant Randall Hoke of the Monroe County Sheriff's Department, was stationary on Harvard Street in the City of Rochester on August 29, 2015 when he observed a station wagon traveling southbound on Oxford Street pass a stop sign at the intersection of Harvard Street and Oxford Street. Sergeant Hoke attempted to make a traffic stop of the station wagon by turning his emergency lights on and following the vehicle. The driver ignored the emergency lights which were flashing and illuminated the night at 10:50 p.m., and instead continued to drive making a right turn onto Harper Street, a left turn onto Wilmer Street, and then turned onto Monroe Avenue. Sergeant Hoke observed the driver lurch to a stop near the curb on Monroe Avenue, then exited the station wagon and staggered as he walked. Sergeant Hoke noted that the driver as walking brusquely away. Based upon the driver's behavior of failing to pull over for a traffic stop, continuing to drive, quickly pulling to the curb and then quickly walking away from him, Sergeant Hoke instructed the driver to "Stop" and to "Get down on the ground." Sergeant Hoke then was able to catch up to the driver, and placed him in handcuffs and walked him to his police car. Sergeant Hoke testified that as he walked to his patrol car, the driver staggered and was unsteady on his feet. The driver of the vehicle was the Defendant, Robert Gregory McDonald. Upon reaching his patrol car, Sergeant Hoke testified that he had the Defendant sit in the rear of his car with the door open and his feet outside the car, on the ground.

Sergeant Hoke asked the Defendant what he had been drinking and the Defendant denied

that he had been drinking. Sergeant Hoke had noticed a strong odor of alcohol emanating from Defendant's breath and advised the Defendant that he could smell alcohol on his breath and Defendant then stated he had consumed two drinks. Sergeant Hoke asked the Defendant where he was coming from or going to and the Defendant said he was going to Enright's, a local bar. Sergeant Hoke testified that due to the totality of circumstances, it was his opinion as a trained drug recognition expert who has been involved in 400 or more driving while intoxicated investigations, that the Defendant was intoxicated and unable to operate a motor vehicle safely.

Robert Gregory McDonald, the Defendant, also testified at the suppression hearing. He testified that Sergeant Hoke approached him and immediately put him in handcuffs and then put him in the backseat of a police car. Defendant testified that the door was closed and his feet were not outside of the car when he and Sergeant Hoke conversed. Defendant maintained he had not been drinking the night Sergeant Hoke stopped him.

CONCLUSIONS OF LAW

Upon a motion to suppress evidence, the People bear the initial burden to establish the legality of the police action (*see, People v. Baldwin*, 25 NY2d 66 [1969]; *People v. Malinsky*, 15 NY2d 86 [1965]). Once the People have met their burden, the burden shifts to the defendant to establish that the police acted unlawfully in violation of the defendant's constitutional rights (*see, People v. Berrios*, 28 NY2d 361 [1971]). In evaluating the propriety of police conduct, the suppression court must determine whether the initial encounter was justified and whether any consequent intrusion was reasonably responsive to the circumstances presented (*see, People v. DeBour*, 40 NY2d 210 [1976]; *see also, People v. Hollman*, 79 NY2d 181 [1992]; *People v. Cantor*, 36 NY2d 106, 111 [1975]). The totality of the circumstances dictates the appropriate level of police intrusion (*see, People v. Giles*, 223 AD2d 39 [1st Dept 1996]; *People v. Martinez*, 80 NY2d 444 [1992]).

In *DeBour* and *Hollman*, the Court of Appeals provided the framework for evaluating the propriety of police-citizen encounters. Under *DeBour* and *Hollman* the appropriate degree of police intrusion is dictated by the level of suspicion warranted under the circumstances. At the lowest level, the “request for information” stage, a police officer may lawfully approach a citizen on the street and ask non-threatening questions, such as the individual’s identity, address or destination “when there is some objective credible reason for that interference not necessarily indicative of criminality” (*DeBour*, 40 NY2d at 223; *Hollman*, 79 NY2d at 185). The second level of intrusion, the “common-law right of inquiry”, allows for more intrusive questioning by police and is “activated by a founded suspicion that criminal activity is afoot” (*see, Hollman*, 79 NY2d at 184, quoting *DeBour*, 40 NY2d at 223). The third level authorizes a police officer to forcibly stop and detain a person when the officer reasonably suspects the person is committing, has committed or is about to commit a felony or misdemeanor (*see, CPL* § 140.50). At the fourth and most intrusive level, an officer having probable cause to believe an individual has committed a crime is authorized to make an arrest (*CPL* § 140.10; *see also, Hollman*, 79 NY2d at 185).

Proof presented at Defendant’s suppression hearing established that the police encounter was lawful at its inception. According to the testimony, which the Court found credible, Defendant passed by a stop sign without stopping. The police were authorized to stop Defendant’s vehicle, having observed a violation of the Vehicle and Traffic Law (*see, People v. Ingle*, 36 NY2d 413 [1975]). “A police officer who can articulate credible facts establishing reasonable cause to believe that someone has violated a law has established a reasonable basis to effectuate a stop” (*People v. Robinson*, 97 NY2d 341, 354 [2001]). Thus, the articulated, credible facts before the Court, justified a stop.

However, before police could effectuate a traffic stop, the Defendant continuously failed to pull over, despite police lights flashing in the darkness of night, and abruptly pulled over and

proceeded to walk quickly away from the officer. Such conduct evinced an unwillingness to cooperate with the police and when combined with Defendant's staggering and unsteadiness on his feet, the consequent intrusion of walking Defendant to a police car and questioning him with the door open, was entirely reasonable.

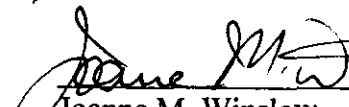
Defendant claims his arrest was unlawful because the arresting officer acted without probable cause. The evidence at the suppression hearing established, however, that Sergeant Hoke's observations of Defendant's operation of his motor vehicle, his failure to stop for a traffic stop, his abrupt stop followed by quickly walking away from the officer, his unsteadiness on his feet, his statement that he had consumed two drinks and the strong odor of an alcoholic beverage on his breath, provided probable cause for Defendant's arrest.

Statements made by the Defendant to Sergeant Hoke, while Defendant was seated in the rear of the police car with the door open, were in response to investigatory questions and were not the product of police interrogation or its functional equivalent. (*see, People v. Oglesby*, 15 AD3 888, 889 [2005], *People v. Parker*, 299 AD2nd 859 [2002]). Notably, the use of handcuffs did not transform the investigatory detention into an unlawful arrest. The Sergeant's decision to handcuff Defendant was reasonable in view of his failure to stop his vehicle in response to the activated emergency lights, as well as the Defendant's behavior of abruptly stopping his car and then walking quickly away from the Sergeant.

Accordingly, Defendant's motion to suppress evidence is hereby denied.

The above constitutes the Decision and Order of the Court.

Dated: September 13, 2016
Rochester, New York


Joanne M. Winslow
Supreme Court Justice

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