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| <p>People v Beaupre</p> |
| <p>2017 NY Slip Op 33103(U)</p> |
| <p>April 10, 2017</p> |
| <p>County Court, Dutchess County</p> |
| <p>Docket Number: 92/2017</p> |
| <p>Judge: Edward T. McLoughlin</p> |
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| <p>This opinion is uncorrected and not selected for official publication.</p> |

COUNTY COURT : DUTCHESS COUNTY

PRESENT: HON. EDWARD T. McLOUGHLIN
Dutchess County Court Judge

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

MICHAEL J. BEAUPRE,

Defendant.

DECISION AND ORDER
DUNAWAY AND HUNTLEY
HEARINGS

Ind. No. 145/2016

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The defendant has been indicted for two counts of Driving While Intoxicated, a class E felony (VTL §1192[3] and [2] and §1193[1][c][i]).

The defendant seeks suppression of all evidence, including statements and observations of police obtained as a result of the stop of his vehicle by members of the Town of Poughkeepsie Police on July 30, 2016 and his subsequent arrest.

During the course of the stop, the defendant made certain statements to the police.

The defendant argues that there was no valid basis for the stop of his vehicle and that there was no probable cause to arrest him and that, accordingly, all evidence (e.g., officer's observations, statements, etc.) obtained as a result of the stop and the arrest must be suppressed.

The People contend that there was a legally sufficient basis to stop the defendant's vehicle, that his statements were voluntarily made and that there was probable cause to arrest him.

FINDINGS OF FACT

I find the testimony of the witnesses to be credible to the extent indicated in these findings.

Testifying before the Court was Officer Jason Fasano, an eight year veteran of the Town of Poughkeepsie Police Department, who had completed required training as a police officer as well as all required DWI investigation training. Officer Fasano testified that on July 30, 2016 at approximately 9:45 p.m. he was on patrol and, upon passing the defendant's pick up truck, observed the rear of the defendant's vehicle and noted that the vehicle had no operating tail lights.

Upon stopping the defendant's vehicle and making contact with the defendant, Officer Fasano noted that the defendant had an odor of alcoholic beverage emanating from the vehicle and also appeared to have glassy eyes. At that time, Officer Fasano inquired as to where the defendant was going and where he was coming from. The defendant responded that he was "coming from the store" and that he was "heading home". Officer Fasano testified that the defendant was not in custody at that time, that he did not threaten or coerce the defendant to make any statements at any point during his contact with him, nor did he promise him any rewards. Officer Fasano summoned another officer for officer safety to help conduct the DWI investigation. During his contact with the defendant, Officer Fasano made repeated observations of an odor of alcohol emanating from the defendant and observed that his eyes were glassy, which he testified were indicia of intoxication. Officer Jason Fasano also observed the field sobriety tests and further investigation

conducted by Officer Drobot.

Officer Drobot, a veteran of approximately seven years and 100 DWI investigations with the Town of Poughkeepsie Police, testified at the hearing. Officer Drobot testified that he joined Officer Fasano at the traffic stop while the defendant was still seated in his vehicle. Officer Drobot initially had verbal contact with the defendant before he was asked to get out of his vehicle, at which point, Officer Drobot observed that the defendant had glassy eyes and also had slurred speech. Officer Drobot initially asked the defendant if he had been drinking. At first the defendant responded "no", then responded that he "had two beers five hours ago". Upon asking the defendant to exit his vehicle, Officer Drobot again observed that the defendant had glassy eyes, an odor of alcohol and impaired motor coordination. Specifically, Officer Drobot noticed that the defendant swayed while standing during the DWI investigation. Both Officer Fasano and Officer Drobot both testified that at no time before the defendant's actual arrest was he in custody. Officer Drobot stated that he made no threats or promises to the defendant at any time.

Officer Drobot testified that he was trained in standard field sobriety tests (SFST) and on that evening administered a horizontal gaze nystagmus test (HGN), the walk-and-turn test and the one leg stand test. Officer Drobot testified that he instructed the defendant regarding the HGN test and that the defendant stated that he understood the instructions. Officer Drobot stated that he checked to make sure that the defendant did not have "resting HGN", nor any other condition that would interfere with an HGN test. Officer Drobot testified that the defendant failed the HGN test.

Officer Drobot also explained that he instructed the defendant regarding the walk-and-turn test and that the defendant understood the instruction. The officer also demonstrated the walk-and-turn test for the defendant. Officer Drobot asked the defendant if he had any physical impairments, to which the defendant responded he did not. Officer Drobot testified that the defendant thereafter failed the walk-and-turn test. Officer Drobot also testified that he instructed the defendant regarding the one leg stand test and that the defendant understood the instructions. Officer Drobot testified that upon attempting the one leg stand test, the defendant failed to complete the test successfully. Officer Drobot also testified that he administered a preliminary breath screening, which was positive for alcohol.

Based on the observations by Officer Fasano and Officer Drobot, including the defendant's statements, observation of his eyes, the odor of alcohol, his manner of standing, the failure of three SFSTs and a positive breath screen, the defendant was thereafter placed under arrest for DWI.

CONCLUSIONS OF LAW

At a suppression hearing, the People have the burden of providing evidence of the legality of the police conduct (People v. Baldwin, 25 NY2d 66, People v. Malinsky, 15 NY2d 86). The defendant, however, has the ultimate burden to establish by a fair preponderance of the credible evidence that the police conduct was illegal. People v. Berrios, 28 NY2d 361).

I find that the officer had a right to stop defendant because he had probable cause to believe that he had violated the Vehicle &

Traffic Law by having inoperable tail lights, an equipment violation. (cf. People v. Robinson, 97 NY2d 341)

I also find that the officers had probable cause to arrest the defendant for Driving While Intoxicated based upon the odor of alcoholic beverages, his glassy eyes, slurred speech, his unsteadiness on his feet, his admissions that he had been drinking beer, the horizontal gaze nystagmus test and his performance on the walk-and-turn and one leg stand field sobriety tests. (People v. Bratcher, 165 AD2d 906; People v. Blajeski, 125 AD2d 582).

Further, I find that both officer Fasano and Officer Drobot's questions to the defendant at the scene of the stop whether he had been drinking, was part of a non-custodial investigatory inquiry which need not be preceded by Miranda warnings. People v. Swan, 227 AD2d 1033 (4th Dept. 2000) lv. den 96 NY2d 788; People v. Baker, 188 AD2d 1012 (4th Dept. 1992), lv. den. 81 NY2d 967.

Accordingly, defendant's motion is denied in all respects.

The foregoing constitutes the decision and order of the Court.

Dated: Poughkeepsie, New York
April 10, 2017



HON. EDWARD T. McLOUGHLIN
COUNTY COURT JUDGE

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