

**People v Holmes**

2017 NY Slip Op 33209(U)

July 24, 2017

County Court, Orange County

Docket Number: 2017-185

Judge: Craig Stephen Brown

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COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

**DECISION AFTER HEARING**

-against-

Ind.# 2017-185  
Index #

THOMAS HOLMES,

Defendant.

-----X  
**CRAIG STEPHEN BROWN, Judge.**

On the 20<sup>th</sup> day of June, 2017, a Hearing was held with regard to the above-entitled matter. Hearing issues concerned the admissibility of oral statements made by defendant and chemical test results. Appearing for the People was R. Alexander McManus, Esq., Assistant District Attorney for the County of Orange. Appearing for defendant was Brandon Ozman, Esq.

Defendant is charged with Aggravated Operating a Motor Vehicle While Under the Influence of Alcohol (Vehicle & Traffic Law §1192.3). The People called Troopers Anthony Eaton and Robert Glas of the New York State Police as witnesses for the Hearing. Defendant called no witnesses.

**FINDINGS OF FACT**

1) On December 10, 2016, at approximately 11:35 P.M., Troopers Anthony Eaton and Robert Glass, of the New York State Police, were on patrol on Walnut Street near the intersection of West Main Street in the Village of Walden, Orange County, New York. Both troopers were in the same troop car with Trooper Eaton driving. At that time, they observed a black, 2001 BMW vehicle traveling on West Main Street. The vehicle had dark tinted side windows. The troopers were unable to see into the vehicle. Trooper Eaton described the tint as "extremely dark". Trooper Glass, testified that, in his opinion, the level of tint, on a scale of 1 to

[\* 2]  
10, was 9. The troopers effected a traffic stop of the vehicle.

2) Trooper Eaton approached the driver's side of the vehicle and Trooper Glass approached the passenger side. Defendant, THOMAS HOLMES, was seated in the driver's seat and was the sole occupant of the vehicle.

3) Trooper Eaton asked defendant for his license and registration and defendant produced the documents. Trooper Eaton asked defendant where he was driving to and from and defendant responded that he was at Sweeney's Pub and was driving home.

4) Trooper Eaton smelled an odor of an alcoholic beverage from defendant and noticed that defendant's eyes were watery, defendant's speech was slurred, and he defendant to exit the vehicle. Defendant complied. As defendant exited the vehicle, he used his right hand to hold the car door for support.

5) Trooper Eaton asked defendant how much he drank and defendant replied that he had three beers and a whiskey. Trooper Eaton asked defendant if he would perform field sobriety tests and defendant agreed to do so.

6) Trooper Glass's training at the State Police Academy included training relating to the administration of field sobriety tests. Trooper Glass accompanied defendant to an area between the troop car and defendant's vehicle and administered the following field sobriety tests to defendant: the Horizontal Gaze Nystagmus Test, the Walk-and-Turn Test and the One-Legged Stand Test.

7) During the Horizontal Gaze Nystagmus Test, Trooper Glas observed that both eyes of defendant had a lack of smooth pursuit, that there was nystagmus at maximum deviation and nystagmus at 45 degrees which, according to his training, indicated a level of intoxication.

8) During the Walk-and-Turn Test, defendant started the test before being instructed to

do so, was unable to keep his balance, raised his arms while performing the test and did not walk in a straight line as instructed.

9) During the One-Legged-Stand Test, defendant raised his leg for approximately 5 seconds, swayed while performing the test, raised his arms while performing the test, then put his leg down to the ground and stated "I'm not doing this test anymore because I know I'm over the limit." Defendant's statement was not in response to any question asked or statement made by either trooper.

10) As a result of defendant's performance of the Field Sobriety Tests and defendant's statement, Trooper Glas formed the opinion that defendant was intoxicated, placed defendant under arrest and transported defendant to the State Police Barracks in Montgomery, New York.

11) After defendant was brought to the State Police Barracks, Trooper Glass read *Miranda* warnings to defendant. Defendant stated that he understood his rights but declined to make any further statements.

12) At no time did any member of law enforcement make a threat or promise or use force or coercion to induce defendant to make a statement.

### **CONCLUSIONS OF LAW**

1) The troopers had a lawful basis to stop the vehicle operated by defendant after they observed the heavily tinted windows on defendant's vehicle.

2) The statements made by defendant following the stop of the vehicle were not the product of custodial interrogation.

3) After detecting an odor of alcohol from defendant and observing defendant's watery and slurred speech, the troopers had a basis to request defendant to submit to field sobriety tests.

4) Defendant's performance of the field sobriety tests, together with his statement that he

[\* 4]

knew he was over the limit, provide a lawful basis for defendant's arrest for Driving While Intoxicated.

5) Defendant's statement that he would not continue to perform the one-legged stand test because he was over the limit was made spontaneously and not in response to any question asked or statement made by a law enforcement official.

### DECISION

Based upon the foregoing, the Court finds that the troopers had a lawful basis to stop defendant's vehicle. In a pre-trial suppression hearing, to justify a traffic stop by a police officer, the People need only establish that there was reasonable cause to believe that a motorist operated a motor vehicle in violation of a provision of the Vehicle and Traffic Law (See, *People v Ingle*, 36 NY2d 413). Here, while there was no testimony presented to establish that the violation was related to the manner in which defendant operated the vehicle, there was evidence presented to establish reasonable cause to believe that defendant operated a vehicle with excessively tinted windows in violation of the provisions of VTL §375(12-a)(b). Therefore, there was a lawful basis to stop the vehicle (See, *People v Edwards*, 222 AD2d 603, *People v Osborne*, 158 AD2d 740, *lv. den.* 75 NY2d 968).

Defendant's Motion to Suppress Oral Statements made at the scene is denied on the ground that the statements made prior to defendant's arrest were not the product of custodial interrogation (See, *People v Mathis*, 136 AD2d 746, *app.den.* 71 NY2d 899). Defendant's motion to suppress the statement made by defendant after he refused to perform the one-legged stand test is denied on the ground that even if defendant was in custody at the time, the statement was spontaneously made and not the produce of any question asked or statement made by a member of law enforcement.

**ADJOURNED DATE**

The matter is scheduled for Pre-Trial Conference for August 3, 2017 at 9:30 A.M.

The aforesaid constitutes the Decision and Order of the Court

Dated: July 24, 2017  
Goshen, New York

**ENTER.**



**HON. CRAIG STEPHEN BROWN**  
Judge of the County Court

TO: ORANGE COUNTY DISTRICT ATTORNEY  
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