

People v Moore
2018 NY Slip Op 30485(U)
March 26, 2018
Supreme Court, Westchester County
Docket Number: CR-2530-17
Judge: Reginald J. Johnson
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Docket No. CR-2530-17

CITY COURT: CITY OF PEEKSKILL
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION &
ORDER
Docket No. CR-2530-17

RAHEEM W. MOORE,

Defendant.

-----X

Appearances:

Anthony A. Scarpino
Westchester County District Attorney
1940 Commerce Street, #204
Yorktown Heights, New York 10598
By: Arthur Bernardon, Asst. Dist. Atty.

Anthony M. Giordano, Esq.
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Atty for Defendant

HON. REGINALD J. JOHNSON

On July 12, 2017 at 10:22 a.m., the Defendant's 2003 Mazda was stopped on the 600 block of Main Street, Peekskill, New York, after he allegedly attempted to evade a sobriety checkpoint on Main Street. After an Ejustice check of the

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Defendant's driving status, it was determined that his NYS driver's license was suspended and that he had an outstanding warrant from New York City. The Defendant was arrested and charged with Avoiding Intersection/Traffic Control Device (VTL §1225) and Aggravated Unlicensed Operation 2d (VTL §511-2(a)(iv).

The Defendant now moves to dismiss the charges pursuant to CPL §170.30(f) which provides that a Court can dismiss charges against a Defendant when "[t]here exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged." Alternatively, the Defendant seeks to suppress all evidence derived from his stop pursuant to CPL §§ 710.20, 710.30, and 710.60. The People oppose the motion.

The Defendant argues that he neither committed a vehicle and traffic violation nor attempted to evade the sobriety checkpoint prior to the stop. Further, the Defendant argues that the sobriety checkpoint was unconstitutional because it was not set up pursuant to written uniform guidelines. See, *People v. Scott*, 63 N.Y.2d 518 (1984); *In re Muhammad F.*, 94 N.Y.2d 136 (1999); *People v. Johnson*, 1 N.Y.3d 252 (2003). Alternatively, the Defendant argues that an *Ingle* hearing should be held to determine the legality of the stop.

The People counter that the sobriety checkpoint was constitutional because it was set up pursuant to uniform written rules. Further, the People argue that the Defendant has not proffered any factual allegations in support of the instant motion and therefore it should be summarily denied. CPL §710.60(3)(b). Alternatively, the People argue that a hearing should be held on the legality of the stop and sobriety checkpoint.

As an initial matter, checkpoint-type vehicle stops are presumptively unconstitutional. See, *City of Indianapolis v. Edmond*, 531 U.S. 32, 38, 42-44 (2000) (the U.S. Supreme Court held that “a checkpoint program whose primary purpose [is] to detect evidence of ordinary criminal wrongdoing” violates the Fourth Amendment). The *Edmond* Court reasoned that

[T]here would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of the American life.

531 U.S. at 42.

The *Edmond* Court established a threshold requirement in checkpoint cases that require the People to affirmatively prove at a pre-trial hearing that the “primary purpose” of the vehicle checkpoint was not merely to “serve the general interest in crime control” or to “detect evidence of ordinary criminal wrongdoing.” 531 U.S. at 38, 42, 44; See also, *People v. Jackson*, 99 N.Y.2d 125 (2002). In order for the People to establish that the “primary purpose” of a checkpoint-type vehicle stop was for DWI-related enforcement purposes, which is constitutionally permissible under *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 [1990], the People must produce the testimony of a high ranking (i.e., policy making) police official. *Edmond*, 531 U.S. at 48 (“we caution that the [primary] purpose inquiry...is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene”). In applying *Edmond* in New York, the *Jackson* Court stated that “the People have the burden of establishing that the primary programmatic objective (not the subjective intent of the participating officers) for initiating a suspicionless vehicle stop procedure was not merely to further general crime control.” 99 N.Y.2d at 131-132. Hence, Suppression Courts are tasked with the responsibility to “examine the available evidence to determine the primary purpose of the checkpoint program” *Edmond*, 531 U.S. at 46.

In *People v. Scott*, 63 N.Y.2d 518, 526 (1984), the Court of Appeals held that a sobriety checkpoint was constitutional provided that it did not “intrude to an impermissible degree upon the privacy of motorists approaching the checkpoint”; that it was “maintained in accordance with a uniform procedure which afford[s] little discretion to operating personnel,” and that it utilized “adequate precautions as to safety, lightning and fair warning of the existence of the checkpoint.” Further, it is well settled that written criteria limiting the discretion of the officers in the field is key to the constitutionality of a vehicle checkpoint. The *Muhammad F.* Court stated that “suspicionless stops of vehicles to conduct sobriety checks at checkpoints *under written guidelines* are constitutional, even if the location of the roadblock regularly changes.” 94 N.Y.2d at 147-48 (emphasis added); See, also, *People v. Velit*, 2002 WL 334690 (N.Y. City Crim. Ct. 2002). To be clear, a sobriety checkpoint must satisfy the criteria set forth in *People v. Scott*, *supra*, *People v. Jackson*, *supra*, (which incorporates the holding in *City of Indianapolis v. Edmond*, *supra*.) and *Michigan Dept. of State Police v. Sitz*, *supra*. As set forth in *People v. Perez-Correoso*, 48 Misc.3d 839,____, 11 N.Y.S.3d 405, 412 (N.Y. Crim. Ct. 2015), the Court stated that:

Federal and New York State precedents indicate that where evidence is recovered during a checkpoint stop, the People bear the burden of establishing: (1) that the primary purpose of the checkpoint was to

address a legitimate law enforcement objective; (2) that the checkpoint was established at the programmatic level; (3) that the checkpoint was an effective means of meeting that objective; (4) that the checkpoint was administered in accordance with a uniform procedure which embodied ‘explicit, neutral limitations of the conduct of [the] individual officers involved’; (5) that the procedures employed at the checkpoint ‘did not intrude to an impermissible degree upon the privacy of motorists approaching the checkpoint’; and (6) that the checkpoint ‘provided adequate precautions as to safety, lighting and fair warning of the existence of the checkpoint’s operation.’”

(Citations omitted).

In the case at bar, the Defendant claims that the sobriety checkpoint was not set up pursuant to uniform written guidelines. If this is proven, the stop of Defendant’s vehicle was unconstitutional, and any evidence derived therefrom must be suppressed as poisonous fruit. See, *Dunaway v. New York*, 442 U.S. 200 (1979). However, if the People establish the required criteria for a constitutional sobriety checkpoint and reasonable cause to believe that the Defendant committed a vehicle and traffic violation prior to the stop, then the suppression motion will be

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denied. Because there are factual issues as to whether the Defendant committed a violation of VTL §1225 when he allegedly left the public roadway and turned into a private driveway, and as to whether the Defendant attempted to evade a sobriety checkpoint when he allegedly approached the sobriety checkpoint and then turned around, the Defendant's motion to suppress is denied since a hearing is required to enable him to adduce the evidence necessary to carry his burden of proof on a suppression motion. See, *People v. Perez*, 149 A.D.2d 344 [1st Dept. 1989]; *People v. Mendoza*, 82 N.Y.2d 415 [1993]. In *People v. Burton*, 130 A.D.2d 675 [2d Dept. 1987], the Appellate Division held that although the Defendant bears the ultimate burden of proof on a motion to suppress evidence based on an illegal search and seizure, the People bear the burden of going forward to show the lawfulness of the police conduct in the first instance.

The Defendant will be granted, upon consent, an Ingle/Mapp/Dunaway hearing prior to trial.

Based on the forgoing, it is

ORDERED, that the Defendant's motion to dismiss the charges and/or suppress the evidence is denied.

ORDERED, that the parties are directed to appear in Court on March 26, 2017 at 9:30 am for all purposes.

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This constitutes the Decision and Order of the Court.

Enter,

Honorable Reginald J. Johnson
City Court Judge
Peekskill, New York

Dated: March 26, 2018