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-5037-17

OCHOA MAESHACK,

Defendant.
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Appearances:

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

Michael Litman, Esq.
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Atty for Defendant

HON. REGINALD J. JOHNSON

As is often stated, "no good deed goes unpunished." That pithy observation is applicable to this case. The defendant in this matter was charged with Driving While Intoxicated (DWI) (Vehicle and Traffic Law [VTL] §1192.3) (a previous conviction within 10 years) ["E" Felony][1]; Refusal to take Breath Test (VTL §1194.1B) [a traffic infraction]; and Improper/No Signal (VTL §1163[d]) [a traffic infraction]. The defendant requested a combined

[1] The felony DWI charge was reduced to a misdemeanor DWI charge on October 17, 2018.

Dunaway/Huntley/Johnson[2]/refusal hearing seeking to suppression any evidence or statements arising from the stop as well as a dismissal of the charges. The People opposed the defendant's request for relief.

A combined Dunaway/Huntley/Johnson/refusal hearing was held on October 17, 2018.[3] The People produced former Peekskill Police Officer[4] Joseph Evans as its witness. The defendant did not testify. Based on the evidence and testimony produced at the hearing, the Court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

The People produced P.O. Joseph Evans as its witness. The Court finds the testimony P.O. Evans to be credible. On October 27, 2017 at approximately 2:43 a.m., P.O. Evans was traveling south on Decatur Street in the City of Peekskill and then he made a left turn onto Main Street when a black BMW traveling west on Main Street failed to come to a complete stop at the stop line marker at the steady red light at the intersection of Decatur and Main Streets, nearly causing a collision with his vehicle. P.O. Evans turned around and followed the BMW into the parking lot of 807 Main Street where it pulled into a parking space. P.O. Evans drove past the BMW and around the building at 807 Main Street so that he could approach the vehicle from a safer vantage point. When P.O. Evans drove around the building and exited onto Main Street, he observed the

[2] *Dunaway v. State of New York*, 99 S. Ct. 2248 (1979); *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838 (1965); *People v. Johnson*, 140 A.D.3d 978 (2d Dept. 2016), and refusal hearing (see, *People v. Davis*, 8 Misc.3d. 158,_, [Bronx Co. Sup. Ct. 2005].

[3] At the conclusion of the hearing, the Court issued an oral order finding that the People met their burden and that a follow up written decision would follow. The parties were later informed by the Court that it tentatively determined that the P.O. Evans did not have probable cause to stop the defendant for failing to signal upon exiting the parking lot and that the parties were invited to submit memoranda on the issue. The People and defendant declined. Hence, the Court now reverses it oral order issued at the hearing and finds that P.O Evans did not have probable cause or reasonable suspicion to stop the defendant's vehicle for failing to signal a turn upon exiting the parking lot.

[4] P.O. Joseph Evans was currently employed by the Town of New Castle Police Department at the time of the hearing.

BMW traveling east on Main Street when it made a right turn into the Municipal "K" parking lot. P.O. Evans pursued the vehicle and observed it proceed out of the Municipal "K" parking lot and make a right turn onto Central Ave and proceed west and then make a left turn onto Union Ave and then a left turn into the Wells Fargo parking lot. P.O. Evans positioned his vehicle facing northbound on Union Ave near the entrance/exit of the Wells Fargo parking lot where the BMW entered.

At 2:49 a.m., P.O. Evans observed the BMW exit the Wells Fargo parking lot onto Union Ave and make a left turn without signaling and then turn right onto South Street. P.O. Evans effected a traffic stop of the BMW on South Street. P.O. Evans approached the defendant's driver's side window and requested his driver's license and registration; he immediately detected an odor of alcohol coming from the defendant, that he had glassy bloodshot eyes and poor motor coordination when handing over his payroll checks for identification purposes, and that he had difficulty answering questions and following directions during the roadside interview. P.O. Evans requested that the defendant exit his vehicle to perform SFSTs[5] which he did and failed them all. The defendant refused a portable breath test roadside. P.O. Evans placed the defendant under arrest for driving while intoxicated and transported him back to headquarters. At headquarters, the defendant refused a chemical test which generated a report of refusal. Thereafter, the defendant was advised of his Miranda rights and he invoked his right to remain silent.

Conclusions of Law

At a suppression hearing, the People have the initial burden of going forward to show the legality of the police conduct in the first instance. Once they have made this showing, the burden shifts to the defendant to prove that the police conduct was illegal (*People v. Berrios,* 28 N.Y. 2d

[5] The Defendant performed the Horizontal Gaze Nystagmus test, Walk-and-Turn test, and the One-Leg Stand test and failed them all.

361 (1971). In determining whether the People have met their burden, the court must examine the police conduct and the attendant circumstances under a reasonableness standard (*People v. Cantor,* 36 N.Y.2d 106 (1975). "The reasonableness standard contemplates and permits a flexible set of escalating police responses, provided only that they remain reasonably related to the scope and intensity to the information the office initially has, and to the information he gathers as his encounter with the citizen unfolds" (*People v. Finlayson,* 76 A.D.2d 670, 675 (2d Dept. 1980). The court's analysis focuses on "whether the officer's action was justified at its inception, and whether it was reasonably related in scope and to the circumstances which justified the interference in the first place" (*Terry v. Ohio,* 392 U.S. 1, 20 (1968).

A vehicle stop by the police is a *De Bour 3* level seizure requiring "reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor" (*People v. De Bour,* 40 N.Y.2d 210, 223 [1976]; see also, *People v. Cantor,* 36 N.Y.2d at 112-13). However, in the context of a vehicle and traffic stop, the Court of Appeals has relaxed this standard to include reasonable cause to believe that a motorist has committed a traffic infraction (see, *People v. Robinson,* 97 N.Y.2d 341, 350 [2001]) ["This Court has always evaluated the validity of a traffic stop based on probable cause that a driver has committed a traffic violation."); *People v. Guthrie,* 25 N.Y.3d 130, 133 (2015); *People v. Sobotker,* 43 N.Y.2d 559, 563 (1978); *People v. Ingle,* 36 N.Y.2d 413, 414 (1975)]. The terms "probable cause" and "reasonable suspicion", at least in the context of a motor vehicle stop for a traffic violation, are legally interchangeable (see, *Ingle,* 36 N.Y.2d at 420) ["what was characterized as probable cause…may be no different than the reasonable suspicion suggested earlier as the basis for a 'routine' traffic stop"].

Vehicle and Traffic Law §1163(d) states,

> The signals provided for in section eleven hundred sixty-four shall be used to indicate an intention to turn, change lanes, or start from a parked position and not be flashed on one side on a parked or disabled vehicle, or flashed as a courtesy or 'do pass' signal to operators of other vehicles approaching from the rear.

In the case at bar, P.O. Evans stopped the defendant's vehicle after he saw it exit the Wells Fargo parking lot and turn left onto Union Avenue without signaling. The gravamen of the People's argument at the hearing was that P.O. Evans' observation of the defendant committing a vehicle and traffic law violation justified the stop which lawfully led to the DWI arrest [see, *People v. Leitch,* 178 A.D. 2d 864 (3d Dept. 1991); *People v. Moffitt,* 19 N.Y.S.3d 713 (N.Y. City Crim Ct. 2015); *People v. Gilles,* 48 Misc.3d 786 (N.Y. J. Ct. 2015)]. However, the case law is abundantly clear that a driver is not legally required to signal upon exiting a parking lot [see, *People v. Mazzola,* 12 Misc.3d 1165(A) [Suffolk Co. Dist. Ct. 2006]) (defendant's failure to signal right turn out of parking lot did not violate VTL §1163[d]); Cf *People v. Silvers,* 195 Misc.2d 739,__, (Mount Vernon City Court 2003) ("nothing in [VTL §1163(b)] requires a motorist to signal a turn when exiting a parking lot")].

Ironically, the defendant conceded that P.O. Evans had probable cause to stop his vehicle based on his failure to signal a turn upon exiting the Wells Fargo parking lot. However, the defendant argued that the SFSTs were improperly administered which resulted in unreliable test results and that therefore the DWI charge should be dismissed. It has been held that even though an officer did not properly administer the roadside sobriety tests, defendant's performance on some of the tests, along with his appearance and overall demeanor, can provide the officer with probable cause to arrest him for DWI (see, *People v Wallgren,* 94 A.D.3d 1339 [3d Dept. 2012]). Further,

probable cause to arrest a driver for DWI need not always be premised upon the performance of field sobriety tests or any specific number of such tests (Id.). Of critical importance is the fact that information and observations obtained by an officer during his inquiries of a driver can provide probable cause to arrest him for DWI (see, *People v. Bolta,* 96 A.D.3d 773, 774 [2d Dept. 2012]). Accordingly, defendant's attack on the administration of the SFSTs roadside is unavailing since P.O. Evans, and the court so finds, had probable cause to arrest him for DWI on the night in question.

However, P.O. Evans mistakenly believed that the defendant violated VTL §1163(d) when he failed to signal a turn upon exiting the Wells Fargo parking lot. In *Matter of Byer v. Jackson,* 241 A.D.2d 943 (4th Dept. 1997), the defendant was stopped after he failed to signal a turn upon exiting a parking lot; the officer detected signs of intoxication and arrested the defendant for DWI and for refusing to submit to a chemical test. At the DMV refusal hearing, DMV conceded that the driver was not required to signal a turn upon exiting a parking lot pursuant to VTL §1163(a), but that the officer's good faith believe that the defendant committed a vehicle and traffic law violation, coupled with the surrounding circumstances, provided the officer with the requisite reasonable suspicion to stop the defendant's vehicle (241 A.D.2d at __,). On appeal, the *Byer* Court disagreed and held that "[w]here the officer's belief is based on an erroneous interpretation of the law, the stop is illegal at the outset and any further actions by the police as a direct result of the stop are illegal" (Id).

The *Byer* Court's "mistake of law" decision was the law of the land in New York State for roughly eighteen years and during that time period courts suppressed evidence from illegal stops based on a "mistake of law,"[6] until the Court of Appeals abrogated the decision in *People v.*

[6] *McDonell v. New York State Dept. of Motor Vehicles,* 77 A.D.3d 1379, ___, (4th Dept. 2010) (causing a moving vehicle to 'fishtail' does not violate VTL §1162, "which [only] prohibits unsafely moving a stopped, standing or

Guthrie, 25 N.Y.3d 130, 132 (2015). In *Guthrie*, the defendant was stopped by a police officer who observed him drive past a stop sign that was not properly registered with the village (Id. at 132-133). Since there was no way that the police officer could have known that the stop sign was not properly registered and therefore not legal, the *Guthrie* Court stated that "the relevant question before us is not whether the officer acted in good faith, but whether his belief that a traffic violation had occurred was objectively reasonable" (Id. at 134). The Court found that the police officer's belief that he observed a traffic violation was objectively reasonable and that the stop was valid (Id. at 140) (see also, *People v. Estrella*, 10 N.Y.3d 945, 946 [2008]).

The *Guthrie* Court further stated:

> This distinction is significant in that a mistake of law that is merely made in 'good faith' will not validate a traffic stop; rather, unless the mistake is objectively reasonable, any evidence gained from the stop---whether based on a mistake of law or mistake of fact—must be suppressed. Thus, contrary to the dissent's suggestion, our holding in this case does not represent a limitation on the rule set forth in *People v. Bigelow* that there is no good faith exception to the exclusionary rule.

25 N.Y.3d at 134 (citations omitted).

In *Heien v. North Carolina,* 135 S. Ct. 530 (2014), the defendants were stopped by a police officer who observed that their vehicle had only one functioning brake light, which the officer

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parked vehicle"); *People v. Rose,* 67 A.D.3d 1447,__, (4th Dept. 2009) (the mere flashing of high beams does not violate VTL §375(3); rather, the high beams must interfere with the driver of an approaching vehicle); *People v. Garlock,* 29 Misc.3d 1223(A) (Lockport Just. Ct. 2010) (same); *People v. Smith,* 67 A.D.3d 1392,__, (4th Dept. 2009) ("We conclude that County Court properly suppressed the evidence on the ground that the police officer made a mistake of law in stopping defendant's vehicle, which had in fact performed a legal pass on the right pursuant to Vehicle and Traffic Law §1123(a)(1) and (2)."); *People v. McKenzie,* 61 A.D.3d 703, __, (2d Dept. 2009) ("the stop of the defendant's vehicle was unlawful, because reasonable suspicion to believe that he had violated Vehicle and Traffic Law §375(2)(a) was lacking"); *People v. Silvers,* 195 Misc.2d 739,__, (Mount Vernon City Ct. 2003) ("nothing in [VTL] 1163(b)] requires a motorist to signal a turn when existing a parking lot"); *People v. Mazzola,* 12 Misc.3d 1165(A) (Suffolk Co. Dist. Ct. 2006) (defendant's failure to signal right turn of a parking lot did not violate VTL §1163[d]).

mistakenly believed was a violation of North Carolina vehicle and traffic law. The *Heien* Court found the stop to be constitutional because the officer's mistake of law was reasonable because the statute as written was susceptible to two interpretations (Id. at 540). The *Heien* Court stated that "The Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable. We do not examine the subjective understanding of the particular officer involved" (Id. at 539). The *Heien* Court held that reasonable suspicion to stop a motor vehicle can be based on a mistaken understanding of the law (Id. at 536).

As the *Guthrie* Court stated,

> As the Supreme Court explained, the requirement that the mistake be objectively reasonable prevents officers from 'gain[ing] [any] Fourth Amendment advantage through sloppy study of the laws [they are] duty-bound to enforce'

25 N.Y.3d at 139 (citation omitted).

P.O. Evans was chargeable with knowledge of the vehicle and traffic law at the time he effected a traffic stop of the defendant's vehicle (Id. at 141) ["In order to make a determination as to the lawfulness of a driver's actions under the Vehicle and Traffic Law, it is axiomatic that an officer must know the mandates and prescriptions set forth in that law (*People v. Robinson,* 97 N.Y.2d at 351, 355, 741 N.Y.S.2d 147, 767 N.E.2d 638) ("the Vehicle and Traffic Law provides an objective grid upon which to measure probable cause" for making a traffic stop.)"] (Rivera, J. dissenting). P.O. Evans testified that he had been a police officer for a year prior to stopping the defendant's vehicle, so he should have known that the defendant did not commit a violation of VTL §1163(d) when he exited the parking lot without signaling a turn. The Court finds that P.O. Evans' stop of the defendant's vehicle on the night in question for failing to signal a turn upon exiting a parking lot was a mistake of law that was not objectively reasonable and therefore the

stop was unlawful.[7] Since the stop of the defendant's vehicle was based on a mistake of law that was not objectively reasonable, any evidence gained from the stop must be suppressed (see, *Guthrie*, 25 N.Y.3d at 134).

Any other issues or arguments raised by the parties not specifically addressed in this Decision and Order have been considered and either rejected or deemed moot based on the Court's ruling.

Based on the forgoing, it is

Ordered, that the Defendant's application to dismiss the charges and to suppress any evidence arising from his arrest is granted.

Ordered, that the parties' appearance scheduled for December 13, 2018 is cancelled.

This constitutes the Decision and Order of the Court.

Enter,

_____

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

Dated: November 13, 2018

[7] P.O. Evans testified that the defendant stopped past the stop line marker at the red light at the intersection of Decatur and Main Streets, which was a violation of VTL §1110(a) (failing to obey a traffic control device). However, P.O. Evans did not charge the defendant with a violation of VTL §1110(a), but only with failing to signal upon exiting a parking lot in violation of VTL §1163(d). P.O. Evans testified that he decided to give the defendant a break and not to charge him with a violation of VTL§1110(a), and in so doing, he unwittingly set the stage for this case to be dismissed since that was the only valid charge he could have used to lawfully stop the defendant's vehicle on the night in question. Hence, the saying rings true: "no good deed goes unpunished."