

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

D22695  
C/kmg

\_\_\_\_AD3d\_\_\_\_

Argued - February 9, 2009

STEVEN W. FISHER, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
ARIEL E. BELEN, JJ.

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2008-02432

DECISION & ORDER

The People, etc., appellant,  
v Michael MacKenzie, respondent.

(Ind. No. 07-00292)

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Thomas P. Zugibe, District Attorney, New City, N.Y. (Argiro Kosmetatos, Elena L. Yeger, and Itamar J. Yeger of counsel, Francesca Eugene on the brief), for appellant.

Daniel E. Bertolino, P.C., Upper Nyack, N.Y. (Jonathan B. Schloss of counsel), for respondent.

Appeal by the People from an order of the County Court, Rockland County (Bartlett, J.), dated February 4, 2008, which, after a hearing, granted those branches of the defendant's omnibus motion which were to suppress the results of breathalyzer tests and his statements to law enforcement officials.

ORDERED that the order is affirmed.

Contrary to the People's contention, 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)(1) was lacking (*see generally People v Whren*, 517 US 806, 810; *People v Ingle*, 36 NY2d 413, 414; *People v Sluska*, 15 AD3d 421, 423-424). Accordingly, the County Court properly granted those branches of the defendant's omnibus motion which were to suppress the results of the breathalyzer tests and his statements to law enforcement officials (*see People v Smith*, 1 AD3d 965; *Matter of Byer v Jackson*, 241 AD2d 943, 944-945; *People v Perez*, 149 AD2d 344, 345).

FISHER, J.P., FLORIO, BALKIN and BELEN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

April 7, 2009

PEOPLE v MACKENZIE, MICHAEL