

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

D32432
C/kmb

_____AD3d_____

Argued - June 3, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2010-02153

DECISION & ORDER

The People, etc., respondent,
v Osei Anokye, appellant.

(Ind. No. 1902/07)

Robert DiDio, Kew Gardens, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Sharon Y. Brodt, and John F. McGoldrick of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered February 23, 2010, convicting him of criminal possession of a weapon in the second degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing (Demakos, J.H.O.), of that branch of the defendant's omnibus motion which was to suppress physical evidence and statements made by the defendant to law enforcement officials.

ORDERED that the judgment is reversed, on the law and the facts, that branch of the defendant's omnibus motion which was to suppress physical evidence and the defendant's statements is granted, the indictment is dismissed, and the matter is remitted to the Supreme Court, Queens County, for the purpose of entering an order in its discretion pursuant to CPL 160.50.

Having credited the defense testimony to the effect that the taillights on the defendant's vehicle were operating properly at all relevant times, a determination which we find is supported by the record (*see People v Prochilo*, 41 NY2d 759, 761; *People v Bennett*, 57 AD3d 912), the hearing court erred in further concluding that the arresting officer acted reasonably in stopping the vehicle based on the inoperability of one of its taillights. Under the circumstances presented, the

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officer could not reasonably have been mistaken as to what she saw, and there was no reasonable basis for her belief that the defendant had committed a traffic infraction (*see People v O'Hare*, 73 AD3d 812; *cf. People v Jean-Pierre*, 47 AD3d 445; *People v Johnson*, 178 AD2d 549). Accordingly, that branch of the defendant's omnibus motion which was to suppress physical evidence and the plaintiff's statements based on the unlawful stop of the vehicle should have been granted.

MASTRO, J.P., FLORIO, BELEN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court