

People v Graham

2006 NY Slip Op 30843(U)

November 3, 2006

County Court, Westchester County

Docket Number: 06-0093

Judge: Gerald E. Loehr

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

FILED
AND ENTERED
ON 11-3- 2006
WESTCHESTER
COUNTY CLERK

QC

-against-

NATHANIEL GRAHAM,

FILED
NOV 3 - 2006

DECISION & ORDER

Indictment No. 06-0093

Defendant.

-----X
LOEHR, J.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The Court has conducted a *Mapp* hearing in this matter. At the hearing, the sole witness was City of Peekskill police officer Daniel Labodin. Based on his testimony, which the Court found credible, the Court finds that at approximately 3:30 a.m. on September 4, 2005 officer Labodin and Peekskill police officer Franco were on routine patrol, each sitting in his marked patrol vehicle near the intersection of Hudson and South Streets in Peekskill, conversing, when officer Labodin observed a black Dodge Durango make a left turn onto Hudson Street without signaling and without stopping at the stop sign at the intersection. Officer Labodin followed the Durango up Hudson intending to pull it over. Officer Franco followed shortly thereafter. When Officer Labodin reached the intersection of Hudson and Washington Streets, some three blocks away, he observed the Durango already parked, its two passengers exiting the vehicle and the defendant standing next to the driver-side door. Officer Labodin put on his lights and instructed the defendant to get back into the car. The defendant disregarded this instruction. That notwithstanding, officer Labodin approached the defendant and requested his license and registration. The defendant produced an identification card and the registration but was unable to produce a driver's license. Officer Labodin commenced a computer check on this information.

As he was waiting for the results, he observed the defendant growing increasingly agitated. He would start to walk away, complaining that: “This is f—ing bullshit!” Officer Labodin would then instruct the defendant to return to the area next to his patrol car. The defendant would initially comply but then the pacing and cursing would recommence. After this sequence of events was repeated several times, officer Labodin become concerned for his safety and informed the defendant that he was to be frisked and that he should put his hands on the hood of officer Labodin’s police car. The defendant initially complied, but as soon as officer Labodin started to pat the defendant down, he raised his hands off the hood and spun around to face the officers.¹ Officers Labodin and Franco then seized the defendant and placed him under arrest for obstructing governmental administration in the second degree (Penal Law § 195.05). He was handcuffed and officer Labodin conducted a full search, recovering 24 bags of cocaine, marijuana and currency from the defendant’s front left pants pocket.

The defendant has moved to suppress the drugs on the basis that the traffic stop was pretextual and that there was insufficient cause for a frisk. By arguing that the stop was pretextual, the Court understands the defendant to be arguing that officer Labodin did not observe the defendant commit the traffic infractions but was tailoring his testimony to nullify constitutional objections (*see, e.g. People v Garafolo*, 44 AD2d 86 [2d Dept 1974]).² Having observed officer Labodin on the stand and in the absence of any conflicting testimony, the Court finds that officer Labodin observed the defendant run through the stop sign and make a left turn

¹ Officer Franco had arrived at Hudson and Washington by this time.

² The other branch of the pretextual doctrine – that an observed traffic infraction will, nonetheless, not justify a stop if the officer’s subjective intent was to investigate a different crime – was abrogated by the Court of Appeals in *People v Robinson* (97 NY2d 341 [2001]).

without signaling (*see People v Diaz*, 10 Misc3d 9, 13-14 [App T, 1st Dept 2005]).

With respect to the frisk, having observed violations of the Vehicle and Traffic Law, officer Labodin had a valid basis for approaching the defendant, requesting his license and registration and detaining him until the status of his license and registration could be checked and traffic citations issued (*People v Banks*, 85 NY2d 558, 562 [1995]). Although the fact that a person has been stopped for a traffic violation does not ordinarily justify a frisk (*People v St. Clair*, 54 NY2d 900 [1981]), where an officer reasonably believes a defendant may be armed or pose a threat to safety, a frisk is justified (*People v Batista*, 88 NY2d 650, 654 [1996]). Here, the defendant's agitation, outbursts, uncooperative and suspicious conduct taking place on a deserted street at 3:30 in the morning after the defendant's passengers had disappeared, rendered the limited pat down for concealed weapons reasonable (*People v King*, 65 NY2d 702 [1985]; *People v Nichols*, 250 AD2d 370 [2d Dept], *lv denied* 92 NY2d 88 [1998]).

Having physically resisted being frisked, the officers had probable cause to arrest the defendant for obstructing governmental administration in the second degree (*People v Santos*, 182 Misc2d 764 [1999]) and then conduct a full search incident to that arrest (*People v Weintraub*, 35 NY2d 351, 353 [1974]).

For the foregoing reasons, the motion to suppress is denied. This constitutes the decision and order of the Court.

Dated: White Plains, New York
November 3, 2006



GERALD E. LOEHR
County Court Judge

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