

People v O'Hare

2007 NY Slip Op 33805(U)

November 28, 2007

Suffolk County Ct

Docket Number: 0001151/2007

Judge: C. Randall Hinrichs

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COUNTY COURT, SUFFOLK COUNTY

TRIAL TERM PART 9

THE PEOPLE OF THE STATE OF NEW YORK,

BY: C. RANDALL HINRICHS, J.C.C.

vs

October 17, 2007

MATTHEW O'HARE,

CASE NO: 1151-2007

Defendant

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The Court conducted a hearing on September 18, 2007 and September 21, 2007 regarding defendant's motion to suppress tangible evidence seized from his vehicle on October 6, 2006. The arresting officer testified for the People. Dr. Jay Shankman and the defendant testified for the defendant.

Suffolk County Police Officer Ryan Sefton testified that on October 6, 2006 he was on patrol in the Mastic/Shirley area in a marked police unit without a partner. Officer Sefton testified that he was traveling westbound on Montauk Highway in the area of the Shirley Motel. The officer further testified that as he was pulling into the motel parking lot he saw a Mercury pulling out of the motel parking lot making a left turn to head eastbound on Montauk Highway. When the officer passed the Mercury on his way into the motel parking lot, he stated that he saw an air freshener hanging from the rear view mirror of the Mercury. The officer turned around in the parking lot and put on his overhead lights and siren on to pull over the Mercury. The Mercury, driven by the defendant, pulled over in the parking lot of a Boston Market store on Montauk Highway near the intersection of William Floyd Parkway.

The officer testified he approached the vehicle and asked defendant for his license. Defendant produced a Nevada driver's license. Officer Sefton testified that he then noticed defendant was not wearing the lap portion of his seat belt. The officer explained that this Mercury vehicle model had an automatic seat belt which automatically pulls the chest portion of the seat belt across the driver's chest when the car is running, but the lower lap portion of the seat belt needs to be pulled across the lap and secured manually. The officer testified that he ran defendant's license and found that defendant's privilege to drive in New York was suspended.

The officer testified that he then asked the defendant to get out of his car so the officer could place him under arrest for driving with a suspended license. The officer stated that as the defendant was getting out of the car, the officer saw, in plain view, a clear plastic bag containing a white powder which he believed were narcotics. The officer testified that he then saw that there

bag was zippered closed. Defendant stated he was sure the bag was closed because it contained a loaded handgun. Defendant testified that he keeps the loaded handgun with him because he wouldn't leave guns unattended in a motel room. Defendant stated that he had a clear plastic bag with baking soda in his car because one of his job responsibilities that day was to secure a boat by making it kid safe for display at a school. Defendant further explained that one of the chores in making the boat kid safe was to neutralize the boat's battery acid and the baking soda was to be used to neutralize the battery acid.

The Court fully credits the testimony of Police Officer Sefton.

Initially, “ ‘as a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred,’ even if the underlying reason for the stop was to investigate another matter unrelated to the traffic violation (People v Robinson, 97 NY2d 341 [2001]; Whren v United States, 517 US 806, 810,[1996].)” *People v. Sluszka*, 15 A.D.3d 421, 423, 790 NYS2d 55 (2nd Dept, 2005.)

Vehicle and Traffic Law (VTL) § 375(30) reads as follows:

“It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the vehicle, except required or permitted equipment of the vehicle, in such a manner as to obstruct or interfere with the view of the operator through the windshield, or to prevent him from having a clear and full view of the road and condition of traffic behind such vehicle.”

Officer Sefton had probable cause here to believe that defendant was in violation of VTL § 375(30), when he observed the air freshener hanging from defendant's rear view mirror and so his decision to stop defendant's vehicle was, therefore, reasonable. The Court fails to see the relevance of either defendant's testimony that his view of the road was never *actually* obstructed by the air freshener or of Dr. Shankman's testimony regarding the length or width of the string attached to the air freshener. The Court is not called upon to determine whether or not defendant is guilty beyond a reasonable doubt of that offense. The Court simply holds, on the testimony of Officer Sefton and defendant's testimony acknowledging the presence of the air freshener hanging from the mirror on that date, that probable cause existed for the police officer to believe that a violation of VTL § 375(30) had occurred.

The Court declines to rule, as urged by the defendant, that VTL § 375(30) is unconstitutional. The Court is aware, as cited by defendant, that a court of concurrent jurisdiction has so held in *People v Lew*, 115 Misc2d 421, 454 NYS2d 225 (County Court, Greene County, 1982.) However, in *People v Perrin*, 201 AD2d 853, 608 NYS2d 333 (3rd Dept, 1994), which specifically acknowledged the decision in *Lew*, it was nonetheless held that “it was error for the County Court, without conducting a hearing, to find VTL § 375(30) to be unconstitutionally vague . . .”

“An enactment of our Legislature is presumed to be valid and the heavy burden of demonstrating that a statute is unconstitutional rests with the one seeking to invalidate the statute. In a challenge to the constitutionality of a penal law on the grounds of vagueness, it is well settled that a two-pronged analysis is required. First, the statute must provide sufficient notice of what conduct is prohibited; second, the statute must not be written in such a manner as to permit or encourage arbitrary and discriminatory enforcement.” *People v Bright*, 71 N.Y.2d 376 (1988.) The Court holds, by application of the two-pronged *Bright* analysis, that the defendant has failed, on the record here, to meet the heavy burden of establishing *either* that

VTL § 375(30) provides insufficient notice as to the conduct prohibited *or* that the statute is written in such a way as to permit or encourage arbitrary and discriminatory enforcement.

Once properly stopped, the officer was entitled to rely on the information relayed to him that defendant's license was suspended. See *Arizona v Evans*, 514 US 1 (1995.) In *Evans*, the Supreme Court held that suppression of evidence pursuant to the exclusionary rule is not warranted when evidence is "seized incident to an arrest resulting from an inaccurate computer record, regardless of whether police personnel or court personnel were responsible for the record's continued presence in the police computer." *Evans, id* at page 6. Therefore, the Court further finds defendant's arrest for driving with a suspended license proper, notwithstanding the fact that the suspension was later discovered not to be valid.

While properly being placed under arrest for driving with a suspended license, the officer observed a clear plastic bag containing a white powder. Significantly, the defendant, in his own testimony, confirmed the presence of a clear plastic bag containing white powder in his vehicle, although defendant contends it was in the center console out of view. "The viewing, . . . of a clear plastic bag containing a white substance on a floor of a car by an officer trained and experienced in the field of narcotics, constitutes probable cause to arrest the defendant and seize the contraband." *People v. Ricciardi*, 149 A.D.2d 742, 743, 540 NYS2d 546 (2nd Dept, 1989.) "Probable cause exists if the facts and circumstances known to the arresting officer warrant a reasonable person to conclude that a crime is being or was committed. A valid arrest for a crime authorizes a warrantless search of a vehicle, and *of any closed containers* visible in the passenger compartment of the vehicle, in which the arrested person is traveling when the circumstances create a reasonable belief that the vehicle or its visible contents may be related to a crime or the commission thereof." (Emphasis added, internal citations omitted.) *People v. Yancy*, 86 N.Y.2d 239, 245 (1995.) Further, discovery of narcotics within a vehicle has been held to provide probable cause to believe that additional contraband may be found in the vehicle, thereby allowing a warrantless search of the vehicle pursuant to the automobile exception. See, for example, *People v. Goldring*, 186 A.D.2d 675, 588 NYS2d 639 (2nd Dept, 1992) which held: "Once the crack vial had been detected, the police had the right to conduct a warrantless automobile search based on the existence of probable cause to believe that the automobile contained contraband [see, *People v Blasich*, 73 NY2d 673 (1989).]" See also, *People v Rives*, 237 Ad2d 312, 654 NYS2d 797 (2nd Dept, 1997.)

The Court holds that the discovery of the clear plastic bag containing a white powder authorized Officer Sefton to conduct a warrantless search of defendant's vehicle, and of any closed containers within the passenger compartment in the vehicle. Since the officer was entitled to search closed containers within the passenger compartment of the vehicle, the disputed question of whether the bag containing the loaded handgun was open or closed is moot. The officer was justified in searching the bag containing the handgun whether the bag was open or closed.

The fact that tests later in the evening revealed that the substance in the clear plastic bag did not contain drugs does not invalidate the search. See, for example, *People v. More*, 283 A.D.2d 715, 725 NYS2d 706 (3rd Dept, 2001) which held "officers' observation of a pipe and a white substance believed to be cocaine constituted reasonable cause to place defendant under arrest. The fact that the material tested negative for a controlled substance did not vitiate the arrest." *Id*, at 716. (Reversed on other grounds by the Court of Appeals which held that the strip

search of the defendant *following* his arrest was invalid. The Court of Appeals specifically upheld the validity of the arrest, however. “Defendant's remaining contentions--*challenging the validity of his arrest*, the admissibility of statements to the police, and that he was deprived of the effective assistance of counsel--are without merit.” [Emphasis added.] *People v. More*, 97 N.Y.2d 209, 214 [2002.]

Additionally, once the police have probable cause to search the vehicle, they do not need to conduct the search immediately. “The Supreme Court has upheld the warrantless search of a stopped vehicle when there is probable cause to believe that contraband or evidence of a crime will be found in the vehicle (*Colorado v Bannister*, 449 U.S. 1; *Carroll v United States*, 267 U.S. 132), even though all of the occupants of the vehicle have been arrested before the search is made (*Chambers v Maroney*, 399 U.S. 42). It has also made clear that it is not of constitutional significance whether the vehicle is searched where it was stopped or impounded and searched after removal to the station house (*Texas v White*, 423 U.S. 67, 68; *Cardwell v Lewis*, 417 U.S. 583, 594; *Chambers v Maroney*, *supra*, at p 52.)” *People v. Orlando*, 56 N.Y.2d 441, 446 (1982.) Here, the officer testified that it became necessary to suspend the search, and transport the vehicle to the precinct before searching further, because onlookers had begun to collect in the Boston Market parking lot. Given that a loaded handgun had already been discovered within the vehicle at the time the police decided to transport the vehicle to the precinct, the Court finds that the decision to remove the vehicle from the parking lot where onlookers were gathering and continue the search of the vehicle a short time later was reasonable.

Given that the Court finds that the guns were lawfully seized, as per the above analysis, the Court finds it unnecessary to rule on whether a valid inventory search was conducted by the police. Nor does the Court see any legal significance to the fact that the People described the search of defendant’s vehicle as an inventory search in their motion papers.

Accordingly, for the reasons stated above, defendant’s application to suppress the tangible evidence seized from his vehicle on October 6, 2006, is denied. This memorandum constitutes the decision and Order of the Court.



J.C.C.