

**People v Wright**

2008 NY Slip Op 32252(U)

August 12, 2008

Rome City Ct

Docket Number: 0044176/2008

Judge: Daniel C. Wilson

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State of New York  
County of Oneida

Rome City Court

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People of the State of New York

vs.

MEMORANDUM DECISION

Joshua R. Wright,  
Defendant.

DOCKET NO. 44176

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Michael R. Nolan, Esq., Asst. District Attorney of Oneida County,  
for the People

David L. Arthur, Esq., Assistant Public Defender of Oneida County, Attorney  
for the Defendant

PRESENT: Hon. Daniel C. Wilson, City Court Judge:

The defendant has moved this court by a motion which was filed with the court on July 14, 2008 and which was duly submitted to the court for decision on August 4, 2008, for an order seeking dismissal of simplified traffic informations herein charging violations of § 511(1) and §1172(a) of the Vehicle and Traffic Law, Aggravated Unlicensed Operation in the 3<sup>rd</sup> degree, and Passing a Stop Sign pursuant to §100.25 of the Criminal Procedure Law. The People have opposed said motion by an answering affirmation which was filed with the court and after due deliberation, the court determines the defendant's motion as follows:

CPL 100.10 (subd 2) and 100.25 in substance indicate that where a defendant receives a simplified traffic information and makes a timely request for a supporting deposition, he is entitled to the supporting deposition prior to trial and the failure to provide same mandates a dismissal (see *People v De Feo*, 77 Misc. 2d 523). Moreover, in order to be considered adequate, a supporting deposition in a case initiated by a simplified traffic information must set forth facts in a plain and concise manner which

provide a reasonable cause to believe that the defendant committed every necessary element of the offense charged (CPL 100.25, subd 2). *People v. Key*, 1978, 45 N.Y. 2<sup>nd</sup> 111; *People v. Baron*, 1980, 107 Misc. 2<sup>nd</sup> 59 ( N.Y. Sup. Ct., App. Term, 2<sup>nd</sup> Dept.).

In the instant matter the defendant contends that the simplified traffic informations' allegations of Aggravated Unlicensed Operation in the 3<sup>rd</sup> degree and Passing a Stop Sign are not supported by the supporting depositions and that in the case of each charge, the supporting deposition provides no factual allegations, but merely restates the statute.

§511(1) of the Vehicle and Traffic Law of the State of New York provides as follows:

A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that such person's license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner..

The supporting deposition as to that charge herein states in pertinent part as follows:

That on 05/04/08 at about 0118 am the said defendant was operating a2006 Toyota bearing State of New York registration DTA5972 on N. James St./Walnut St., a public highway in the City of Rome, Oneida County, New York and while knowing or having reason to know that his/her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner.

**§1172 (a) of the Vehicle and Traffic Law provides as follows:**

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of §1144 of the Vehicle and Traffic Law.

The supporting deposition as to that charge herein states in pertinent part as follows:

To Wit: On May 4, 2008 at about 1:25 am the said defendant was operating the above mentioned vehicle east on Sycamore St. While entering the intersection with N. Madison St. Said defendant

did fail to come to a complete stop before going through the stop sign and proceeding east on Sycamore St.

A supporting deposition must be a "written instrument", "subscribed and verified", and "containing factual allegations of an evidentiary character — which supplement those of the accusatory instrument and support or tend to support the charge or charges contained therein" (CPL 100.20). In addition, CPL 100.25 (2) mandates that the supporting deposition contain "allegations of fact \* \* \* providing reasonable cause to believe that the defendant committed the offense or offenses charged".

According to CPL 100.40 (2), a simplified information is facially sufficient when it substantially conforms to the form prescribed by the Commissioner of Motor Vehicles and supporting depositions timely filed therewith contain allegations of fact, based either upon personal knowledge or information and belief, that provide reasonable cause to believe that defendant committed the offense charged (CPL 100.25 [2]; 100.20). "Reasonable cause" exists when: "information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it" (CPL 70.10 [2]). Facts constituting every element of the offense charged must be factually alleged (*People v. Gingello*, 181 Misc. 2<sup>nd</sup> 163 (City Court of Rochester, 1999; *People v Powlowski*, 172 Misc 2d 240; *People v Born*, 166 Misc 2d 757; *People v Baron*, supra).

For an accusatory instrument charging aggravated unlicensed operation to be facially sufficient there must be factual allegations providing "reasonable cause" to believe that defendant operated a motor vehicle upon a public highway while he knew that his license or privilege to operate was suspended or revoked (Vehicle and Traffic Law § 511(1)).

Here, defendant was operating a motor vehicle allegedly while he knew that he was suspended or revoked for something, but no factual allegations of such knowledge or of such revocation or suspension

was made. Moreover, no information was supplied as to what suspension or revocation was in effect.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially insufficient to support the charge of aggravated unlicensed operation. (CPL 70.10 [2]).

Since the supporting deposition did not comply with the requirements of supporting every element of the offense, the criteria set forth in the CPL were not satisfied (see CPL 100.40, subd 2; 100.25, subd 2; 100.20). Accordingly, the motion would be granted and the charge of Aggravated Unlicensed Operation in the 3<sup>rd</sup> degree would be dismissed upon its face.

For an accusatory instrument charging passing a stop sign to be facially sufficient there must be factual allegations providing "reasonable cause" to believe that defendant operated or drove a motor vehicle upon a public highway and that he stopped at a clearly marked stop line, but if none, then should stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection

The supporting deposition does not include an allegation that the stop sign was authorized by the Common Council of the City of Rome, but §1110 © of the Vehicle and Traffic Law provides that:

Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evic

Accordingly, a presumption exists that the stop sign was properly authorized.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially sufficient to support the charge of obstructed view(CPL 70.10 [2]).

Since the supporting deposition did comply with the requirements of supporting every element of the offense, the criteria set forth in the CPL were satisfied (see CPL 100.40, subd 2; 100.25, subd 2; 100.20). Accordingly, the motion would be denied as to the charge of obstructed view.

The defendant's motion is granted as above stated, but in all other respects will be denied.

This will constitute the Decision and the Order of the Court.

ENTER:

DANIEL C. WILSON

ROME CITY COURT JUDGE

DATED: August 12, 2008