

People v Yates

2009 NY Slip Op 32312(U)

October 7, 2009

Rome City Court,, Oneida County

Docket Number: 46774

Judge: Daniel C. Wilson

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

State of New York
County of Oneida

Rome City Court

People of the State of New York

vs.

MEMORANDUM DECISION

Robert L. Yates, Jr.,
Defendant.

DOCKET NO. 46774

Christopher D. Hameline, Esq., Asst. District Attorney of Oneida County,
for the People

Frank Policelli, Esq., 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 27, 2009 and which was duly submitted to the court for decision on August 12, 2009, for an order seeking dismissal of accusatory instruments herein charging violations of § 1192(3) of the Vehicle and Traffic Law, Driving while Intoxicated pursuant to §100.25 of the Criminal Procedure Law and charges of Obstructing Governmental Administration in the 2nd degree pursuant to §195.05 of the Penal Law , Unlawfully Fleeing a Police Officer pursuant to §270.05 of the Penal Law and Reckless Endangerment in the 2nd degree pursuant to §120.20 of the Penal Law for being defective upon their face, and for an order seeking discovery and inspection of certain listed items including any promise made by the prosecution to potential witnesses, and for relief pursuant to *People vs. Sandoval* , 34 NY 2d 371 (1974) as to the use for cross examination purposes of any prior criminal convictions and/or bad acts of the defendant at a trial of this action, and for disclosure of exculpatory material pursuant to federal and state case law, and for suppression of oral and written statements of the defendant and any evidence

obtained by the detention of the defendant upon the basis that they were obtained in violation of the defendant's rights under the New York and United States Constitutions, and for leave to submit any further motions necessitated by the relief obtained from this motion. 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. 2nd 111; *People v. Baron*, 1980, 107 Misc. 2nd 59 (N.Y. Sup. Ct., App. Term, 2nd Dept.).

In the instant matter the defendant contends that the simplified traffic information's allegation of intoxication is not supported by the supporting deposition.

§1192(3) of the Vehicle and Traffic Law of the State of New York provides as follows:

No person shall operate a motor vehicle while in an intoxicated condition.

The supporting deposition herein consists of a checklist which purports to support the allegation of intoxication by an allegation of a violation of § 1180(d) of the Vehicle and Traffic Law, speed in zone together with an allegation of vomiting, fleeing from the scene, and symptoms of odor of alcoholic beverages, glassy eyes, impaired speech, and impaired motor condition. The defendant also allegedly admitted to consuming four mixed drinks.

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".

Here, the factual statements in the deposition are communicated by check marks made in boxes next to the applicable conditions and observations signifying the complainant's allegations as to the existence of those conditions and the truth of those observations. The Court of Appeals has held such signification sufficient to meet the requirements of CPL 100.20 that the supporting deposition be a "written instrument" containing "factual allegations of an evidentiary character" which "support or tend to support the charge or charges contained therein". *People v. Hohmeyer*, 70 N.Y. 2nd 41, 1987.

The accusatory instrument's supporting documentation contains factual allegations sufficient to establish reasonable cause that defendant violated Vehicle and Traffic Law § 1192(3).

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. 2nd 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 driving while intoxicated 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 in an intoxicated condition (Vehicle and Traffic Law §§ 1192 [3]). A defendant is "intoxicated" when "such person has consumed alcohol to the extent that he ... is incapable, to a substantial extent, of employing the physical and mental abilities which he ... is expected to possess in order to operate a vehicle as a reasonable and prudent driver" (CJI[NY]2d VTL 1192 [3]; *see, People v Cruz*, 48 NY2d 419, 428, *appeal dismissed* 446 US 901; *see also, People v Ardila*, 85 NY2d 846, 847; *People v Gary*, 233 AD2d 939). Factors to be considered include, for example, a defendant's physical condition and appearance, balance and coordination, manner of speech, the presence of the odor of alcohol, the manner in which he operated the vehicle, opinion testimony regarding sobriety and the circumstances of any accident (CJI[NY]2d VTL 1192 [3]; *see also, People v Hohmeyer*, 70 NY2d 41, 44; *People v Lopez*, 170 Misc 2d 278, 281).

Many factors noted in the supporting deposition are consistent with intoxication . Also present is the officer's opinion as to intoxication.

Based upon the totality of the factual allegations, the court finds that the accusatory instruments are facially sufficient to support the charge of driving while intoxicated . A person of ordinary intelligence, judgment and experience would believe it reasonably likely that the offense of driving while intoxicated was committed (CPL 70.10 [2]).

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

The defendant has also moved to dismiss the charges of Obstructing Governmental Administration in the 2nd degree, Unlawfully Fleeing a Police Officer and Reckless Endangerment in the 2nd degree for being defective upon their face.

The accusatory instruments herein which are labeled as an “information/ complaint” states legal and factual allegations regarding an incident allegedly occurring on the 4th of July, 2009 and alleges charges of Obstructing Governmental Administration in the 2nd degree, Unlawfully Fleeing a Police Officer and Reckless Endangerment in the 2nd degree.

The accusatory instrument to be valid upon its face within the provisions of CPL 100.40 would in addition to the requirements of the reasonable cause to believe that the defendant committed the offense charged in the accusatory instrument, would also have to establish by, “nonhearsay allegations of the factual part of the information and/or of any supporting depositions” every element of the offense charged and the defendant’s commission thereof.

An “information” (charging a misdemeanor or petty offense) must demonstrate “reasonable cause” and be legally sufficient for a prima facie case, a much more demanding standard than what is required for a felony complaint. *People vs. Alejandro*, 70 N.Y.2d 133 (1987).

§100.15 of the Criminal Procedure Law does require that, “ The factual part of such instrument must contain a statement of the complainant alleging facts of an evidentiary nature supporting or tending to support the charges.”

The procedural requirements for the factual portion of a local criminal court information are, simply: that it state "facts of an evidentiary character supporting or tending to support the charges" (CPL 100.15 [3]; *see*, CPL 100.40 [1] [a]); that the "allegations of the factual part ... together with those of any supporting depositions ... provide reasonable cause to believe that the defendant committed the offense charged" (CPL 100.40 [1] [b]); and that the "[n]on-hearsay allegations [of the information and supporting depositions] establish, if true, every element of the offense charged and the defendant's commission thereof" (CPL 100.40 [1] [c]; *see*, CPL 100.15 [3]).

So long as the factual allegations of an information give an accused notice sufficient to prepare a

defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading (*see, People v. Casey*, 95 N.Y. 2nd 354, 360; *People v Jacoby*, 304 NY 33, 38-40; *People v Knapp*, 152 Misc 368, 370, *affd* 242 App Div 811; *People v Shea*, 68 Misc 2d 271, 272; *see also, People v Allen*, 92 NY2d 378, 385; *People v Miles*, 64 NY2d 731, 732-733)

The *Alejandro* case actually involved a failure to satisfy the first requirement of CPL 100.40 (1) (c), in that there was a total absence of pleading of one of the elements of the crime of Resisting Arrest, i.e., that the defendant had resisted an "*authorized*" arrest (Penal Law §§ 205.30 [emphasis supplied]; *People v Alejandro, supra*, at 135-136). In the case at bar, the question would not be the pleading, but the proof on the face of the papers.

The accusatory states that:

The foregoing allegations are based upon personal knowledge of the deponent and/or upon information and belief, the sources of complainant's information and grounds for belief being

The accusatory instrument, although partially based "upon information and belief" does not have any supporting deposition attached nor does it show the officer's source of knowledge or its reliability.

As stressed by the court in *People v Alejandro* (*supra*), the unique function that an information serves under the Criminal Procedure Law is the reason the additional showing is required for a prima facie case. Unlike a felony complaint, a defendant can be tried on an information alone. Misdemeanor complaints are not tested by a preliminary hearing or a Grand Jury proceeding. With prosecution upon an indictment the People are not required to present at any stage before trial actual evidence demonstrating a prima facie case.

The "reasonable cause" standard defined in

2. CPL 70.10 (2) and referenced in CPL 100.40 (4) (b) is, not coincidentally, also the statutory standard for determining whether a person was lawfully arrested (see CPL 140.10 [1]). Moreover reasonable cause is the equivalent of probable cause *Fitzpatrick v. Rosenthal*, 809 NYS 2d 729 (4th Dept., 2006); (see *People v Maldonado*, 86 NY2d 631, 635; *People v Wharton*, 60 AD2d 291, 293, *affd* 46 NY2d 924, *cert denied* 444 US 880), the constitutional prerequisite for a lawful arrest. "The [constitutional] standard for arrest is probable cause, defined in terms of facts and circumstances sufficient to warrant a prudent [person] in believing that the (suspect) had committed or was committing an offense" (*Gerstein v Pugh*, 420 US 103, 111, quoting *Beck v Ohio*, 379 US 89, 91). Where a demonstration of probable or reasonable cause is based on hearsay information, New York courts apply the *Aguilar-Spinelli* test, requiring that the hearsay affiant establish "that the informant had some basis for the knowledge ... transmitted ... and that [the informant] was reliable" (*Fitzpatrick v. Rosenthal*, *supra.*; *People v Bigelow*, 66 NY2d 417, 423; see *People v DiFalco*, 80 NY2d 693, 696; *People v Johnson*, 66 NY2d 398, 402; see generally *People v Davis*, 170 Misc 2d 987, 994; *People v Born*, 166 Misc 2d 757, 759-761).

The hearsay-based information or complaint before us fails to meet either prong of the *Aguilar-Spinelli* test. In *People v Parris* (83 NY2d 342), the Court of Appeals concluded that an arrest made by a police officer based on hearsay information imparted by a fellow officer and attributed to an eyewitness was unlawful under the "basis-of-knowledge prong of *Aguilar-Spinelli*" and thus was not based on the requisite probable cause (*id.* at 349-350). In so concluding, the Court reasoned that "the suppression court was relegated to reliance upon [the hearsay information imparted to the arresting officer, and that officer's] conclusory characterization of the neighbor/informant as an eyewitness[,] in order to determine the reliability of the information claimed to have established probable cause. This, however, is precisely what the *Aguilar-Spinelli* standard was designed to avoid" (*id.* at 350). The subject information also fails to establish the reliability of the informant prong of the *Aguilar-Spinelli* test, and

since it is an “information”, then it cannot be based upon hearsay at all.

No information was furnished to the court concerning whether the “information” came from an anonymous or a paid informant, in which event an independent showing of reliability would have been required, or whether those accounts came from an identified citizen informant, in which event there would be no need to furnish further evidence of reliability (*Fitzpatrick v. Rosenthal*, supra; cf. *Parris*, 83 NY2d at 349-350; *People v Hicks*, 38 NY2d 90, 94-95; *People v Gamble*, 279 AD2d 478, 478-479, lv denied 96 NY2d 829).

Accordingly, the defendant’s motion to dismiss the charges of Obstructing Governmental Administration in the 2nd degree, Unlawfully Fleeing a Police Officer and Reckless Endangerment in the 2nd degree for the papers being defective upon their face would be in all respects granted.

The defendant’s motion for relief pursuant to *People vs. Sandoval*, supra, and *People v. Ventimiglia*, supra, will be granted insofar as the People will be directed to serve upon the defendant and file with the court a list of all prior criminal convictions and/or bad acts of the defendant which they intend to use for cross examination purposes or upon their direct case at a trial of this action. Such list shall be served and filed by a date to be fixed by the court within three days of trial. At such time, the court will determine which, if any, of said list may be used for such purposes at the trial of this action. Pending said in camera ruling, said motion would be in all other respects denied.

Part 5 of defendant’s moving papers requesting disclosure of exculpatory material will be in all respects granted with the consent of the People. The People have recognized their continuing duty to disclose any such exculpatory material to the defense. Part 3 of defendant’s motion would be in all respects granted.

The defendant’s motion to suppress the alleged oral and written statements of the defendant and any evidence obtained as a result of the detention of the defendant will be granted insofar as a hearing

will be conducted to determine said issues on November 25, 2009 at 2:00 P.M., but pending the results of said hearing said motion would be in all other respects denied.

The defendant's motion to reserve the right to submit any further motions necessitated by the relief obtained from this motion would be granted pursuant to the provisions of section 255.20 (3) of the Criminal Procedure Law, but in all other respects will be denied.

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: October 7, 2009