

**People v Solorzano**

2009 NY Slip Op 33193(U)

December 8, 2009

County Court, Wayne County

Docket Number: 09/88

Judge: Richard A. Dollinger

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STATE OF NEW YORK  
COUNTY COURT

COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

09-88

v.

**DECISION AND  
MOTION TO  
SURPRESS**

KIMBERLY A. SOLORZANO, a/k/a  
Kimberly A. Grelewica,

Defendant.

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Appearances: For the People of State of New York  
Wayne County District Attorney Richard Healy, Esq.  
By: David Shaw, Esq

For the Defendant  
Angelo Rose, Esq.

**Dollinger, J.**

Defendant has moved to suppress certain evidence which she contends was unlawfully obtained , after her vehicle was stopped by the police. A pretrial hearing was conducted on October 13, 2009 at which time the People presented two police officers, a 911 operator, and a civilian as witnesses. The Court finds their testimony credible in all respects.

On March 3, 2009 at approximately 6:55 pm, civilian Michael Colangelo was driving his vehicle eastbound on Atlantic Avenue in the Town of Walworth, Wayne County. At that time, Colangelo approached a white vehicle which was moving very slow and swerving over the center line. Soon after the car stopped in the middle of the road for no apparent reason. Colangelo exited his car and approached the stopped vehicle as other vehicles

drove around and honked their horns. As he walked up to the white vehicle, it began moving again. Colangelo went back into his car and proceeded to call 911 while continuing to follow the white vehicle. He then reported to the 911 operator a description of the white vehicle, including the license plate number, color, make, and model and described the erratic operation of the vehicle.

As Colangelo continued to follow the white vehicle, he observed the car continue to swerve, travel extremely slowly, drive through a stop sign without stopping, leave the pavement and drive over a homeowner's lawn as it made a turn, and drive through a red light traffic before stopping in the middle of the intersection. The white vehicle remained in the intersection and almost was hit by two cars, Colangelo testified. The light turned green and the white vehicle continued to drive. Soon after, a New York State Trooper vehicle appeared and pulled over the white vehicle. Colangelo testified that he reported all his observations to the 911 operator.

The 911 operator, Tammy Ayotte, testified that she is employed by the Wayne County 911 center and was working the evening of March 7, 2009. At approximately 6:55 p.m., she received a call from civilian Michael Colangelo regarding a female driver that was "all over the road." Mr. Colangelo described the vehicle, the erratic driving, the location, and stated the license plate number. Ms. Ayotte stayed on the phone with Mr. Colangelo for several minutes as he continued to provide her with information regarding the vehicle he was following. The information he provided was typed into a computer by Ms. Ayotte and directly forwarded to a dispatcher.

New York State Trooper John Morgan heard a radio dispatch "regarding a possible sick or intoxicated driver operating a white Ford Taurus southerly on route 350 in the town

of Walworth.” and “alleged erratic driving.” *Transcript*, p. 35-37. Trooper Morgan proceeded north on route 350 and soon observed a white Ford Taurus, matching the description and license plate number he had been provided, heading south. He turned his vehicle around, came up behind the white Ford Taurus, put on his emergency flashers, and affected a stop of the vehicle. Trooper Morgan exited his police vehicle, approached the white Ford Taurus, and immediately recognized the driver—the defendant, Kimberly Solorzano. Trooper Morgan observed a strong odor of an alcoholic beverage emanating from the defendant’s breath and asked her if she had been drinking that evening and how much. She replied that she had “more than I should.” *Transcript*, p. 40.

At that point, Wayne County Sheriff Deputy Laura Hinz arrived at the scene, approached the defendant’s white Ford Taurus and observed that the defendant “smelled like an alcoholic beverage.” *Transcript*, p. 75. Deputy Hinz asked her if she had been drinking and the defendant acknowledged that she had. When the defendant subsequently failed a series of field sobriety tests, Deputy Hinz made the determination that the defendant was intoxicated, and placed her under arrest.

Under these circumstances, the stop of the defendant’s vehicle was lawful because upon receiving the dispatch of a “possible sick or intoxicated driver,” Trooper Morgan had at least reasonable suspicion that the driver of said vehicle was committing a violation of the Vehicle and Traffic Law. See *People v. White*, 27 AD3d 1181 (4<sup>th</sup> Dept. 2006); *People v. Spencer*, 84 NY2d 749 (1995) (the police may lawfully stop a vehicle when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime). *People v. Shehady*, 21 Misc3d 1101(A)

(2008) (anonymous tip regarding a sick or intoxicated driver dispatched to police officer provided reasonable suspicion to believe that defendant had committed a crime, thereby justifying a stop of the vehicle).

Furthermore, Trooper Morgan had probable cause to believe that the defendant had committed a traffic violation. People v. Robinson, 97 NY2d 341 (2001). In addition to the report of “a possible sick or intoxicated driver,” dispatch also reported to Trooper Morgan “alleged erratic driving” regarding the defendant. The 911 operator testified that she transcribed into her computer the eye witness Michael Colangelo's description of the many traffic violations he observed and then proceeded to transfer this information to the 911 dispatcher. A copy of the 911 operator's transcription was entered into evidence at the hearing (see People's Exhibit 2). As noted above, the 911 dispatcher then reported to Trooper Morgan the “alleged erratic driving” of the defendant along with a description of the vehicle.

Although all the details of the defendant's alleged erratic driving were not conveyed to Trooper Morgan, under the collective or “imputed knowledge” doctrine, a stop, search, and/or arrest is permissible in instances in which the acting officer lacks the specific information to form the basis for probable cause or reasonable suspicion but sufficient information to justify the arrest or search was known by other law enforcement officials initiating or involved in the investigation. United States v. Colon, 250 F3d 130 (2d Cir. 2001); United States v. Hensley, 469 US 221 (1985); United States v. Valez, 796 F2d 24 (2d Cir. 1986) (the rule exists because, in light of the complexity of modern police work, the arresting officer cannot always be aware of every aspect of an investigation; sometimes

his authority to arrest a suspect is based on facts known only to his superiors or associates).

Here, the dispatcher, a law enforcement officer, received the information from the 911 operator, who had received the information from a named informant, and made the determination that there was reasonable suspicion that the defendant was committing a crime and probable cause that the defendant had committed a traffic violation. See People v. Rance, 227 AD2d 936 (4<sup>th</sup> Dept. 1996) (police action may be based upon information from anonymous source where it relates to matters gravely affecting personal or public safety); People v. Jeffrey, 2 AD3d 1271 (4<sup>th</sup> Dept. 2003) (police possessed the requisite reasonable suspicion to stop defendant's motor vehicle where the basis was a 911 report that contained details so specific and congruous with that which was actually encountered that the reliability of the information could reasonably be assumed). Based on this determination, dispatch summarized the report to Trooper Morgan by informing him of "a possible sick or intoxicated driver" and "alleged erratic driver" with the location and description of the vehicle.

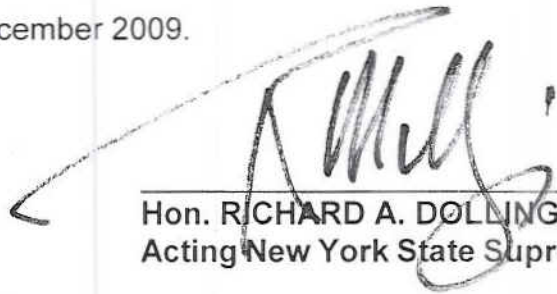
Pursuant to People v. White, the police may lawfully stop a vehicle when they have either (1) probable cause to believe that the driver of a vehicle has committed a traffic violation or (2) there exists reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or about to commit a crime. Here, as explained above, the arresting officer's conduct meets both criteria. The stop of the defendant's vehicle was lawful and all evidence obtained a result is admissible. Furthermore, the arrest of the defendant was supported by probable cause based on the statements made by the

defendant and the observations of Trooper Morgan and Deputy Hinz. Finally, defendant's statements made before her arrest are admissible on the basis that they were obtained through investigatory questioning; and statements made by the defendant after her arrest are also admissible because were obtained after her *Miranda* warnings were properly explained to her.

Defendant's motion to suppress is therefore denied in al respects.

This constitutes the Order of the Court.

Dated this 8<sup>th</sup> day of December 2009.



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Hon. RICHARD A. DOLLINGER  
Acting New York State Supreme Court Judge