

People v Phillips

2010 NY Slip Op 30033(U)

January 11, 2010

Rome City Ct

Docket Number: 47156

Judge: Daniel C. Wilson

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State of New York
County of Oneida

Rome City Court

People of the State of New York

vs.

MEMORANDUM DECISION

Antoinett M. Phillips,
Defendant.

DOCKET NO. 47156

Joshua L. Bauer, 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 November 18, 2009 and which was duly submitted to the court for decision on November 24, 2009, for an order seeking dismissal of simplified traffic informations herein charging violations of § 511(1), §375(40), and §509(1) of the Vehicle and Traffic Law, Aggravated Unlicensed Operation in the 3rd degree, Inadequate Stoplamps, and Unlicensed Operation, 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. 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 operation while knowing that the defendant is suspended is not supported by the supporting deposition 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:

I, Ptlm. A.J. Ciccone, being the police officer complainant on a Simplified Traffic Information heretofore filed with this Court Charging the above named defendant with having committed the offense of Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree in violation of Section 511 subdivision 1(a) of the Vehicle and Traffic Law of the State of New York, do hereby make the following allegations of fact in support thereof; That on 09-08-09 at about 2:38 P.M. the said defendant was operating a 2001 Chev bearing State of New York registration BBX9940 on W. Dominick 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 te commissioner.

§375(40)(a) of the Vehicle and Traffic Law of the State of New York provides as follows:

40. Stop lamps. (a) Every motor vehicle, except a motorcycle, operated or driven upon the public highways of the state, if manufactured prior to January first, nineteen hundred fifty-two, shall be equipped with at least one stop lamp which shall display a red to amber light visible at least five hundred feet from the rear of the vehicle when the brake of such vehicle is applied.

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

I, Ptlm. A.J. Ciccone, being the police officer complainant on a Simplified Traffic Information heretofore filed with this Court Charging the above named defendant with having committed the offense of Inadequate Brake Lamps (one Brake lamp/left side out) in violation of the Vehicle and Traffic Law of the State of New York, do hereby make the following allegations of fact in support thereof; That on 09-08-09 at about 2:38 P.M. the said defendant was operating a 2001 Chev bearing State of New York registration BBX9940 on W. Dominick St, a public highway in the City of Rome, Oneida County, New York.

On 09-08-09 at approx. 2:38 P.M. the above vehicle was traveling in a easterly direction on W. Dominick St. with only one brake lamp working. The left side brake lamp was out.

§509(1) of the Vehicle and Traffic Law of the State of New York provides as follows:

1. Except while operating a motor vehicle during the course of a road test conducted pursuant to the provisions of this article, no person shall operate or drive a motor vehicle upon a public highway of this state or upon any sidewalk or to or from any lot adjacent to a public garage, supermarket, shopping center or car washing establishment or to or from or into a public garage or car washing establishment unless he is duly licensed pursuant to the provisions of this chapter.

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

I, Ptlm. A.J. Ciccone, being the police officer complainant on a Simplified Traffic Information heretofore filed with this Court Charging the above named defendant with having committed the offense of Operating a Motor Vehicle without a License in violation of Section 509 subdivision 1 of the Vehicle and Traffic Law of the State of New York, do hereby make the following allegations of fact in support thereof; That on 09-08-09 at about 2:38 P.M. the said defendant was operating a 2001 Chev bearing State of New York registration BBX9940 on W. Dominick St, a public highway in the City of Rome, Oneida County, New York and said defendant was not duly licensed pursuant to the provisions of the New York State Vehicle and Traffic Law.

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. 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 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, but no factual allegations of a suspension or revocation, or of knowledge of such revocation or suspension was made.

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 3rd degree would be dismissed upon its face.

For an accusatory instrument charging Inadequate Stoplamps 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 did not have adequate taillamps upon the vehicle.

Here, defendant was operating a motor vehicle on a public highway, but no factual allegations to support the elements of operating with inadequate Stoplamps was made, including an allegation that the vehicle was manufactured prior to 1952.

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 Inadequate Stoplamps would be dismissed upon its face.

For an accusatory instrument charging 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 was not duly licensed or privileged to operate.

Here, defendant was operating a motor vehicle allegedly while he was not duly licensed, but no factual allegations to support that allegation was made.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially insufficient to support the charge of 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 Unlicensed Operation would be dismissed upon its face.

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: January 11, 2010