People v Yates
2010 NY Slip Op 30284(U)
February 8, 2010
Rome City Court
Docket Number: 46774
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.

Robert L. Yates, Jr.,
Defendant.

MEMORANDUM DECISION

DOCKET NO. 46774

John J. Raspante, 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 December 16, 2009 and which was duly submitted to the court for decision on December 24, 2009, for an order seeking dismissal of accusatory instruments herein charging violations of Obstructing Governmental Administration in the 2nd degree pursuant to §195.05 of the Penal Law , Unlawfully Fleeing a Police Officer in a Motor Vehicle in the 3rd degree pursuant to §270.25 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 dismissal of the charges herein for a denial of the defendant's right to a speedy trial pursuant to the statutory and constitutional provisions of the State of New York and the United States, 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:

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As to the charge of Obstructing Governmental Administration in the 2nd degree the accusatory instrument herein which is labeled as an information/complaint states as to the factual allegation regarding an incident occurring on or about the 4th day of July, 2009 at about 1:20 A.M. as follows:

> On the aforementioned date and time the defendant, Robert L. Yates Jr., did intentionally obstruct, impair or pervert the administration of law or other governmental function or prevent or attempt to prevent a public servant from performing an official function, by means of any independently unlawful act, by unlawfully fleeing from the deposing Deputy during a traffic stop and DWI investigation on Erie Blvd. In the City of Rome, Coounty of Oneida, State of New York.

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 in a Motor Vehicle in the 3rd degree 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.2nd 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."

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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).

§195.05 of the Penal Law of the State of New York reads as follows:

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents of attempts to prevent a public servant from performing an official function, by any independently

> unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

§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 factual portion of the accusatory herein does support the legal portion, so that the only question before the court would be whether the factual allegation , as stated, constitutes a violation of the statute.

As opposed to the factual situation in *People v. Case* 42 N.Y. 2nd 98 wherein the Court of Appeals found the obstructing governmental administration charge inappropriate, the police activity area herein was confined and defined, and the defendant was put on specific, direct notice. There is an allegation that he intentionally interfered with the police activity, and specifically disobeyed their directive by physical acts. *Matter of Davan L.* 91 N.Y. 2nd 88. A rational fact finder could conclude that he placed his own safety, as well as the safety of the officer and others in the public, at risk, and consequently interfered with and obstructed law enforcement administration. *Matter of Davan L.*, supra.

Accordingly, the defendant's motion to dismiss as to the charge of Obstructing Governmental Administration in the 2nd degree for the papers being defective upon their face would be in all respects denied.

As to the defendant's motion to dismiss the accusatory instrument herein charging Unlawfully Fleeing a Police Officer in a Motor Vehicle in the 3rd degree in violation of §270.25 of the Penal Law, the statute reads as follows:

> A person is guilty of unlawful fleeing a police officer in a motor vehicle in the third degree when, knowing that he or she has been directed to stop his or her motor vehicle by a uniformed police officer or a marked police vehicle by the activation of either the lights or the lights and siren of such vehicle, he or she thereafter attempts to flee such officer or such vehicle by driving at speeds which equal or exceed twenty-five miles per hour above the speed limit or engaging in reckless driving as defined by

1. section twelve hundred twelve of the vehicle and traffic law.

The accusatory instrument does list the elements of Reckless Driving and alleges certain activity as allegedly violating that statute.

The accusatory instrument alleges in the factual portion that:

> On the aforesaid date and time the defendant, Robert L. Yates jr.(sic), did while stopped for traffic violations flee from the deposing Deputy in a 2004 Chevy bearing NY Reg. EGV6940 at speed greater than 100mph in a marked 40 and 30mph speed zone and engaged in reckless operation by moving in and out of traffic without regard to the safety of the other vehicles on the road. This all occurring on Erie Blvd in the City of Rome, County of Oneida, State of New York.

As noted in the criminal jury instructions for this charge one element of this offense is that the defendant was being pursued by a uniformed police officer or a marked police vehicle by the activation of either the lights or the lights and sirens of such vehicle. No such factual allegation is made within the body of the information.

As stressed by the court in *People v Alejandro* (supra), the unique function that an information

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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).

Accordingly, the defendant's motion to dismiss the charge of Unlawfully Fleeing a Police Officer in a Motor Vehicle in the 3rd degree for the papers being defective upon their face would be in all respects granted.

As to the defendant's motion to dismiss the accusatory instrument herein charging Reckless Endangerment in the 2nd degree pursuant to §120.20 of the Penal Law , the accusatory reads as follows:

> On the aforementioned date and time the defendant, Robert L. Yates Jr., did recklessly engage in conduct whtich created a substantial risk of serious physical injury to another person by operating a 2004 Chevy Bearing NY Reg. EGV6940 at speeds over 100mph fleeing from the Deposing Deputy recklessly moving in and out of traffic without regard to the safety of the other

vehicles on the road on Erie Blvd in the City of Rome, County of Oneida, State of New York.

The statutory charge filed against the defendant reads as follows:

§ 120.20. Reckless endangerment in the second degree

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

The accusatory instrument upon its face satisfies all of the requirements of the case law. Accordingly, the defendant's motion to dismiss as to the charge of Reckless endangerment in the second degree for the papers being defective upon their face would be in all respects denied.

As to the defendant's motion to dismiss the charge for denial of the defendant's right to a speedy trial, the parties have agreed that the matter was commenced upon the date of the occurrence rather than the return date of the appearance ticket as authorized by §30.30(5)(b) Criminal Procedure Law.

CPL §30.30(5)(b) provides that where a defendant has been served with a desk appearance ticket, the criminal action "must be deemed to have commenced on the date the defendant first appears in a local criminal court in response to the ticket." *People v. Parris,* 79 N.Y. 2nd 69, 71. The legislature made clear that when a defendant who has received a DAT fails to appear in court on the return date, the speedy trial clock does not begin to run until the defendant actually appears in court, regardless of the reason for defendant's failure to appear. *People v. Parris,* supra at p.71. However, the court cannot make the factual determination by referring to the docket entries, so that the People have conceded a commencement of the action on July 4, 2009 rather than July 6, 2009.

The parties have agreed that all adjournments thereafter were for motions upon the original

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accusatories or the replacement accusatories. However, the People have only stated in conclusory fashion that they have announced readiness, but they have not stated when that may have been made. The defendant merely states that there was no announcement within the proper time period.

Accordingly, a hearing will be scheduled to determine the issue of the date of the announcement of readiness and also to determine the prior suppression motion on April 16, 2010 at 11:00 A.M. Pending said hearing the 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: February 8, 2010