

People v Collins

2010 NY Slip Op 31620(U)

July 6, 2010

Rome City Ct

Docket Number: 47958

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

Carol Y. Collins,
Defendant.

DOCKET NO. 47958

No appearance by 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 April 19, 2010 and which was duly submitted to the court for decision on May 5, 2010, for an order seeking dismissal of simplified traffic informations herein charging violations of §1212, §1180(b), and §509(1) of the Vehicle and Traffic Law, Reckless Driving, Speeding in Excess of the State Speed Limit, and Unlicensed Operation, pursuant to §100.25 of the Criminal Procedure Law. The People have not opposed said motion orally or by any answering affirmation 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 reckless driving is not supported by the supporting deposition and that in the case of each charge, the supporting depositions provide no factual allegations, but merely restates the statute.

§1212 of the Vehicle and Traffic Law of the State of New York provides as follows:

Reckless driving shall mean driving or using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway. Reckless driving is prohibited. Every person violating this provision shall be guilty of a misdemeanor.

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

3. Date 1/19/2010 Time 4:01 P.M. C/T/V of City of Rome –3301
4. Vehicle Year 2007 Make HYUN Color BK - BLACK
License Plate No. DYB3263 State NY
5. General Direction of Travel by Defendant EAST
6. Highway (Type/Name) 2 - STATE ST 365 EB
7. Charge based on Officer's DIRECT OBSERVATION

§ 1180(b) of the Vehicle and Traffic Law, Speed in Excess of the State Speed Limit, reads as follows:

(b) no person shall drive a vehicle in excess of 55 mph

The supporting deposition herein states in pertinent part as follows:

Officer **D. Olney** of the **NEW YORK STATE POLICE** a Police Officer and the Complainant

alleges that the Defendant committed a violation of

1. VTL Section **1180B** Description **SPEED OVER 55 ZONE**
2. Date 1/19/2010 Time 4:01 P.M. C/T/V of City of Rome –3301
3. Vehicle Year 2007 Make HYUN Color BK - BLACK
License Plate No. DYB3263 State NY
4. General Direction of Travel by Defendant EAST
5. Highway (Type/Name) **2 - STATE ST 365 EB**
6. Defendant's Speed: 92 MPH in a 55 MPH Zone
7. Charge based on Officer's **DIRECT OBSERVATION**
8. Speed Verified By **RADAR MODEL STALKER DUAL**

§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:

3. Date 1/19/2010 Time 4:01 P.M. C/T/V of City of Rome –3301
4. Vehicle Year 2007 Make HYUN Color BK - BLACK
License Plate No. DYB3263 State NY
5. General Direction of Travel by Defendant EAST
6. Highway (Type/Name) 2 - STATE ST 365 EB
7. Charge based on Officer's **DIRECT OBSERVATION**

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 reckless driving to be facially sufficient there must be factual allegations providing "reasonable cause" to believe the defendant was driving a motor vehicle in a manner which unreasonably interfered with the free and proper use of the public highway and unreasonably endangered users of the public highway. *People v. Muscarnera*, 16 Misc. 3rd 622 (District Court, Nassau County, 2007).

Here, defendant was operating a motor vehicle, but no factual allegations of the manner of operation were made.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially insufficient to support the charge of reckless driving. (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 Reckless Driving would be dismissed upon its face.

In order to establish a charge of §1180(B) of the Vehicle and Traffic Law the supporting deposition would have to have factual allegations to support the elements. Therefore it would have to establish that on the date in question that (1). That the defendant drove a vehicle on a public highway in the City of Rome, and (2) that at the same time and place the defendant drove the vehicle at a speed greater than 55 mph.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially sufficient to support the charge of Speed in Excess of the State Speed Limit (CPL 70.10 [2]).

Since the supporting deposition does comply with the requirements of supporting every element of the offense, the criteria set forth in the CPL is satisfied (see CPL 100.40, subd 2; 100.25, subd 2; 100.20). Accordingly, the motion would be in all respects denied as to the charge of operating in excess of the state speed limit.

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: July 6, 2010