

**People v Marotte**

2010 NY Slip Op 32485(U)

September 13, 2010

City Court of Rome, Oneida County

Docket Number: 48358

Judge: Daniel C. Wilson

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State of New York  
County of Oneida

Rome City Court

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People of the State of New York

vs.

MEMORANDUM DECISION

Thomas J. Marotte,  
Defendant.

DOCKET NO.  
48358

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

John G. Leonard, 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 May 21, 2010 and which was duly submitted to the court for decision on July 14, 2010 for an order seeking discovery and inspection of certain listed items, and for disclosure of exculpatory material pursuant to federal and state case law, and for dismissal of the charges of §1180 (e) of the Vehicle and Traffic Law, Speed Not Reasonable and Prudent, and §1120(a) of the Vehicle and Traffic Law, Failure to Keep Right, upon the basis that the supporting depositions are defective pursuant to §100.25 and 100.40(2) of the Criminal Procedure Law, and for relief pursuant to *People vs. Sandoval*, 34 NY 2d 371 (1974) and *People v. Ventimiglia*, 52 N.Y. 2<sup>nd</sup> 350 (1981) as to the use for cross examination purposes or upon the direct case of the people of any prior criminal convictions and/or bad acts of the defendant at a trial of this action, and for

suppression of breath test results and alleged oral and written statements and for suppression of items of physical evidence as being obtained in violation of the defendant's rights under the United States and New York State Constitutions and for the improper administration of the breath test, and for the ordering of a hearing as to the admissibility of field sobriety tests, 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:

The defendant's motion for discovery and inspection is denied with leave to renew following the demand procedure with the People. If there is a denial of the items in the demand, the defendant may renew the motion.

The People have recognized their continuing obligation to supply any exculpatory material to the defense.

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.

The defendant's motion for suppression of the breath test results and any oral and written statements will be granted insofar as a hearing will be scheduled to determine said issues on November 3, 2010 at 11:00 A.M.. The motion is granted insofar as the hearing is scheduled.

but in all other respects would be denied. The defendant's motion to suppress all other unnamed evidence obtained from the defendant would be denied without a hearing for failure to allege grounds and identify the items seized.

The defendant's motion to dismiss the charge of Speed Not Reasonable and Prudent under §1180(e) of the Vehicle and Traffic Law is determined 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. 2<sup>nd</sup> 111; *People v. Baron*, 1980, 107 Misc. 2<sup>nd</sup> 59 ( N.Y. Sup. Ct., App. Term, 2<sup>nd</sup> Dept.).

**§ 1180(e) of the Vehicle and Traffic Law, Speed too Fast for Conditions ( Special Hazard ),** reads as follows:

**(e) The driver of every vehicle shall, consistent with the requirements of subdivision (a) of this section, drive at an appropriate reduced speed** when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when approaching and passing by an emergency situation involving any authorized emergency vehicle which is parked, stopped or standing on a highway and which is displaying one or more red or combination red and white lights pursuant to the provisions of

1. paragraph two of subdivision forty-one of section three hundred seventy-five of this chapter, when traveling upon any narrow or winding roadway, and **when any special hazard exists with respect to pedestrians, or other traffic by reason of weather or highway conditions, including, but not limited to a highway construction or maintenance work area.**

§ 1180(a) of the Vehicle and Traffic Law, reads as follows:

(a) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

The supporting deposition herein states in pertinent part as follows:

On or about March 25, 2010 at about 2:12 o'clock in the forenoon, in the City of Rome, County of Oneida, State of New York, the defendant, while operating the above stated vehicle in a northerly direction, failed to reduce speed appropriately when approaching an intersection. To Wit: On the aforementioned date and time, the defendant, Thomas Marotte, while operating a green, 1998 Pontiac, bearing New York Registration EXV3244, in a northerly direction on Route 46 in the City of Rome, County of Oneida, State of New York. During the time of said operation, the defendant failed to reduce his speed as he passed through the intersection of Route 46 and Elmer Hill Road, causing the defendant to lose control of the vehicle and travel north onto the western shoulder of Route 46. The vehicle then spun and overturned onto it's roof and landed in the southbound lane of Route 46, facing south..

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. 2<sup>nd</sup> 163 (City Court of Rochester, 1999); *People v Powlowski*, 172 Misc 2d 240; *People v Born*, 166 Misc 2d 757; *People v Baron*, supra).

In order to establish a charge of §1180(e) 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 what is reasonable and prudent under existing conditions, including actual and potential hazards, at that time, consisting of a special hazard with respect to approaching and crossing an intersection.

The supporting deposition does not allege the speed of the vehicle, or how it might have been unreasonable and imprudent.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially insufficient to support the charge of Speed too Fast for Conditions ( Special Hazard )(CPL 70.10 [2]).

Since the supporting deposition does not comply with the requirements of supporting every element of the offense, the criteria set forth in the CPL is not satisfied (see CPL 100.40, subd 2; 100.25, subd 2; 100.20). Accordingly, the motion to dismiss the simplified traffic information alleging §1180(e) of the Vehicle and Traffic Law would be in all respects granted

The defendant's motion to dismiss the charge of FAILURE TO KEEP RIGHT under

§ 1120(a) of the Vehicle and Traffic Law is determined as follows:

§1120(a) of the Vehicle and Traffic Law of the State of New York , insofar as if is applicable to this case reads as follows:

Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When overtaking or passing pedestrians, animals or obstructions on the right half of the roadway;
3. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
4. Where travel on the shoulder or slope is permitted by section eleven hundred thirty-one of this article;
5. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
6. Upon a roadway restricted to one-way traffic.

The supporting deposition herein states in pertinent part as follows:

On or about March 25, 2010 at about 2:12 o'clock in the forenoon, in the City of Rome, County of Oneida, State of New York, the defendant, while operating the above stated vehicle in a northerly direction, did not drive upon the right half of the roadway when he

was driving north on Route 46 and failed to keep right on Route 46 when he approached the intersection of Elmer Hill Road. The said defendant, Thomas Marotte, had been operating a green, 1998 Pontiac, bearing New York Registration EXV3244, north on Route 46 when, upon approaching the intersection with Elmer Hill Road, failed to keep right and traveled north onto the western shoulder of Route 46. All this occurring in the City of Rome, County of Oneida, State of New York.

In order to establish a charge of § 1120(a) 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 on or about the 25<sup>th</sup> day of March, 2010, in the county of Oneida, the defendant, Thomas J. Marotte operated a motor vehicle on Route 46\_ in the City of Rome.
2. That Route 46 is a roadway of sufficient width.
3. That the defendant drove the vehicle on the left side of the roadway, and,
4. That none of the exceptions applied.

The supporting deposition does not allege that none of the exceptions apply.

Based upon the totality of the factual allegations, the court finds that the accusatory instrument is facially insufficient to support the charge of FAILURE TO KEEP RIGHT (CPL 70.10 [2]).

Since the supporting deposition does not comply with the requirements of supporting every element of the offense, the criteria set forth in the CPL is not satisfied (see CPL 100.40, subd 2; 100.25, subd 2; 100.20). Accordingly, the motion to dismiss the simplified traffic information alleging §1120(a) of the Vehicle and Traffic Law would be in all respects granted

The defendant has moved for a hearing as to the admissibility of field sobriety tests including the field screening test. The issues of a proper foundation and of the adequacy of procedures here are before the court. Accordingly the hearing ordered above will also address this motion.

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: September 13, 2010