

People v St. Thomas

2011 NY Slip Op 31715(U)

June 27, 2011

City Court of Rome

Docket Number: 50162

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

Peter S. St. Thomas,
Defendant.

DOCKET NO.
50162

Steven P. Feiner, 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 March 25, 2011 and which was duly submitted to the court for decision on April 21, 2011 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 suppression of all evidence upon the basis that the arrest was not based upon probable cause, and for relief pursuant to *People vs. Sandoval*, 34 NY 2d 371 (1974) and *People v. Ventimiglia*, 52 N.Y. 2nd 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 pursuant to Frye v. U.S., 293 F. 1013 as to the admissibility of field sobriety tests, and for preclusion of identification testimony for failure to comply with the provisions of §710.30 of the Criminal Procedure Law 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 the defendant has filed a reply affidavit to that answer, and after due deliberation, the court determines the defendant's motion as follows:

The defendant's motion for discovery and inspection is denied subject to any motion directed toward the People's discovery response to the defendant's demand filed herein.

Defendant's demands would be granted as to any exculpatory evidence. 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 August 5, 2011 at 2:00 P.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.

As to the defendant's motion for a hearing pursuant to *Frye v United States*, 293 F 1013, as was stated in *People v. Thomas*, 121 AD2d 73, 76, affd 70 NY2d 823, as to the field sobriety tests, the Alco-Sensor testimony was clearly not admissible to show intoxication. It is well settled that "there must be a sufficient showing of reliability of the test results before scientific evidence may be introduced" (*People v. Spaight*, 92 AD2d 734, 735; compare, *People v. Donaldson*, 36 AD2d 37, 40). "Scientific evidence will only be admitted at trial if the procedure and results are generally accepted as reliable in the scientific community" (*People v. Hughes*, 59 NY2d 523, 537). The Court further stated in *Thomas*, supra at p. 76 as to the Alco-Sensor screening test, that although an Alco-Sensor test is not admissible as evidence of intoxication, breath screening devices have won acceptance as being sufficiently reliable to establish probable cause for an arrest (see, *Matter of Smith v. Commissioner of Motor Vehicles*, 103 AD2d 865, 866; see also, *Boyd v. City of Montgomery*, 472 So 2d 694, 697, supra.; *State v. Thompson*, 357 NW2d 591, 593, supra.; *State v. Orvis*, 143 Vt 388, 465 A2d 1361, 1362-1363, supra.). It would appear in the case of the field sobriety tests, as well, that they would be admissible to show probable cause for the arrest at a suppression hearing and at trial, but would not be admissible at the time of trial as evidence-in-chief of intoxication without the proper foundation required by

the above cases. The defendant has moved for a hearing pursuant to *Frye v. United States*, supra, but his objection will be considered as to the admissibility of the test based upon the foundation, and not the scientific basis for the field sobriety tests. While foundation concerns itself with the adequacy of the specific procedures used to generate the particular evidence to be admitted, the test pursuant to *Frye v. United States*, supra, poses the more elemental question of whether the accepted techniques, when properly performed, generate results accepted as reliable within the scientific community generally. *People v. Wesley*, 83 N.Y. 2nd 417 (1994). That *Frye* question is not before the court. The issues of a proper foundation and of the adequacy of laboratory procedures here are before the court.

The motion as to the validity of the field sobriety test results, therefore, will be granted as to the foundational issues insofar as a hearing will be scheduled to determine said issues at the same time as the suppression hearing ordered above. *People v. Colon*, 180 A.D. 2nd 876 (3rd Dept., 1992). The motion is granted insofar as the hearing is scheduled, but in all other respects would be denied.

The defendant's motion to preclude identification testimony would be denied at this point with leave to renew if an application for late notice under 710.30 of the Criminal Procedure Law is filed with the court.

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: June 27, 2011