

People v Amos

2014 NY Slip Op 31967(U)

February 27, 2014

County Ct, Wayne County

Docket Number: 13-83

Judge: Daniel G. Barrett

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At a Term of the County Court held in and for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 24th day of February, 2014.

Present: Honorable Daniel G. Barrett
County Court Judge

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

DECISION
Ind. No. 13-83

-vs-

TIMOTHY S. AMOS.

Defendant

Appearances - People - ADA Christopher Bokelman, Esq.
Defendant - Fiandach & Fiandach

The Defendant having previously filed motion papers and requesting pre-trial hearings. The Court scheduled a Huntley and Probable Cause Hearing, regarding the stop and arrest of the Defendant.

On behalf of the People Sergeant Croft, now Investigator Croft of the Wayne County Sheriff's Department, Deputy Sheriff Andrea Murphy and Palmyra Patrolman Husk all testified on behalf of the People. Defendant presented no evidence.

Admitted as Exhibits on behalf of the People are the following:

- Exhibit 1 Refusal Warnings regarding the taking of the Breathalyzer Test;
- Exhibit 2 Miranda Warnings;
- Exhibit 3 A recording of Richard Healy's conversation with the 911 Operator regarding the arrest of the Defendant on May 18, 2013.

Investigator Joseph Croft of the Wayne County Sheriff's Department testified. At the time of the incident arrest he was a Sergeant with the Wayne County Sheriff's Department. He testifies at approximately 7:30 P.M. he received a transmission from a 911 operator that District Attorney Richard Healy had observed a car driving erratically and the car was now stopped at the Sunoco Gas Station on Route 31, Palmyra, New York. Investigator Croft responded to the said gas station. At the scene he observed District Attorney Richard Healy, Deputy Andrea Murphy and Patrolman Husk. They were all standing near a black Chevy Blazer parked outside the convenience store. The police officer standing next to a person the investigator later learned was Timothy Amos. When Investigator Croft pulled in he got out the car and spoke with District Attorney Healy who gave him a summary of what had transpired. Mr. Healy reiterated he was driving east on Route 31 when he noticed the Defendant behind him and that the Defendant was driving erratically and following too close and that in his opinion the Defendant appeared to be intoxicated.

Investigator Croft then went over to where Deputy Murphy and Patrolman Husk were. He observed the Defendant doing field sobriety tests. At that time he observed that the Defendant had apparently urinated himself. Investigator Croft stayed at the scene for approximately fifteen minutes and then went to the Palmyra Police Department with Deputy Murphy and Patrolman Husk.

He did observe Deputy Murphy administering the field sobriety tests and he noticed the Defendant was swaying when he walked, admitting he needed support when walking or was standing. His speech was slurred and in his opinion based upon his experience and training that the Defendant was highly intoxicated.

At the police department he did have a conversation with the Defendant as to whether he had any previous arrests for DWI.

At the Palmyra Police Department the Defendant was yelling and making statements about the investigator and his family. At one point the holding cell door was open to advise the Defendant to sit down and calm down. At that point he made a move towards the investigator and the investigator advised that he stiff armed the Defendant and he fell down in the holding cell. The Defendant was not injured.

Deputy Andrea Murphy then testified. She has been with the Sheriff's Department approximately a year and one-half.

She became aware of the Defendant's vehicle from 911. She was advised there was a car coming from Flaherty's in Macedon heading eastbound on Route 31. She learned the car was being observed by District Attorney Healy. She went to the Sunoco Gas Station in Palmyra, New York and met District Attorney Healy there.

At the scene she approached District Attorney Healy next to a black Chevy SUV. She noticed in that vehicle there were empty beer cans. When the Defendant came out of the convenience store he had a six pack of beer. She noticed at that time he was swaying when he walked and when he came by his vehicle he had to lean up against the car. There was a smell of alcoholic beverage coming from his breath. At that point District Attorney Healy was engaging the Defendant in conversation. The Defendant admitted he was driving home from Rochester, New York from his girlfriend's house. He firstly admitted to having a six pack of beer and then later changed that to four beers. He stated he felt he was alright to drive, maybe. She noticed he was slow in his motor skills, that he urinated his pants, that he was stumbling when he walked and swaying when he stood.

Deputy Murphy then conducted three field sobriety tests, the HGN test, the walk and turn and the one leg stand.

The Defendant failed the HGN test which is where there is an involuntary jerking of his eyes.

The Defendant could not do the walk and turn test. He used his car to balance himself. He did not do heel to toe in any of the steps. Going out he only took seven or eight steps and was not walking a straight line. He only did one step coming back and was raising his arms during the whole period of time.

As to the one leg test, the Defendant was swaying, used his arms to balance and put his foot down almost immediately.

She did an inventory of the Defendant's vehicle and found an empty twelve pack of beer in the car which smelled of beer. She observed a beer can in a cup holder on the consol of the front seat and that can smelled of beer.

Based upon the deputy's observation, training and experience she found the Defendant to be intoxicated.

The Defendant was taken to the Palmyra Police Department for a Breathalyzer test and placed the Defendant under arrest for Driving While Intoxicated. The Defendant was agitated and yelling. At one point he had to be placed in shackles because he was kicking his legs.

Richard Healy then testified. He is the District Attorney of Wayne County. He called the 911 Center around 7:00 P.M.. At approximately Wegman's in Perinton he noticed the Defendant's vehicle behind him. He and the Defendant were heading east on Route 31.

He noticed the vehicle being driven erratically. It would go back and forth in the lane and then would come up behind his vehicle very close and then would back off. He also observed the vehicle going off the shoulder of the road and then coming back on into the lane.

Mr. Healy called 911 and maintained his call with the operator to describe what was happening. He wanted a policeman to meet him. At approximately Yellow Mills Road in Palmyra he pulled over to the shoulder of the road and allowed the Defendant to pass him. He observed the Defendant then turning into the Sunoco Gas Station on the west end of Palmyra on Route 31. He saw the Defendant get out of his vehicle and go into the store.

The Defendant came out approximately five minutes later and he engaged the Defendant in conversation. He noticed when he came out of the store that he was staggering. His speech was also slurred and he could smell alcohol coming from him. The Defendant advised he was driving from Rochester from his girlfriend's house and admitted to having six beers. He stated he felt alright to drive.

Investigator Croft then arrived and Mr. Healy gave him a summary of what had happened and he then left.

Patrolman Husk of the Palmyra Police Department responded to the scene. He had gotten the information from the 911 operator. He approached Mr. Healy at the scene. He noticed the Defendant coming out of the store with a six pack and then talking to Mr. Healy. He observed Deputy Murphy administer the field sobriety tests.

Based upon the patrolman's observation at the scene and his experience and training, he felt the Defendant was intoxicated.

At the Palmyra Police Department he read the Defendant his Miranda Warnings and his Breathalyzer Refusal Warnings. He read the Refusal Warnings three times. After the second time the Defendant asked to call his sister and he was allowed to do so. After that phone call, he still refused the Breathalyzer test.

At this point the People rested and the Defendant provided no evidence.

The People argue that there was probable cause to approach the Defendant at the convenience store, probable cause to arrest him and that the statements set forth on the 710.30 Notice were either voluntarily made by the Defendant after Miranda Warnings or were pursuant to foundational questioning at the scene as allowed by law.

The Defendant argues that he said nothing in response to Miranda Warnings, and that is an indication of his right to remain silent and anything thereafter should not be admissible.

The People argue that there was a founded suspicion of criminality based upon the police officer's knowledge prior to coming to the scene, what they had heard the Defendant say and what they observed the Defendant do at the scene.

New York State Law provides that there has to be probable cause to stop a vehicle. Stopping an automobile is legal only pursuant to routine, non-pretextual traffic checks to enforce traffic regulations, or where there is at least a reasonable suspicion of a crime or probable cause that the driver has committed a traffic violation. In evaluating police conduct the court must determine whether the action taken was justified in its inception and at every later stage of the encounter.

The police needed articulable reason, not necessarily indicative of criminality, to make a reasonable inquiry, equivalent to DeBour level 1. An informational approach with no restraint on the individual is minimal intrusion.

In this case the witness, District Attorney Richard Healy had observed the Defendant's vehicle driving erratically for a period of time, following him too closely and going off the shoulder of the road.

After the vehicle had passed Mr. Healy he observed him going into the Sunoco Gas Station in Palmyra. He observed the Defendant coming out of the store, with a six pack of beer, staggering. The District Attorney had the right to question the Defendant regarding his driving and his drinking.

Deputy Murphy observed the Defendant coming from the store, observed the indicia of intoxication, observed him responding to questions, walking from the store to his vehicle and his response to the field sobriety tests.

Based upon Deputy Murphy's observations, experience and training she placed the Defendant under arrest for Driving While Intoxicated. The Deputy certainly had the probable cause to observe the Defendant, inquire of the Defendant and to place him under arrest.

The statements from the Defendant as set forth in the 710.30 Notice were either voluntarily made pursuant to an informational approach by law enforcement or made after the Miranda Warnings.

Therefore, the Court finds probable cause for stop and arrest and statements admissible at trial as set forth in the 710.30 Notice.

Dated: February 27, 2014
Lyons, New York



Daniel G. Barrett
County Court Judge