

People v White

2014 NY Slip Op 34018(U)

October 4, 2016

County Court, Dutchess County

Docket Number: 769/2016

Judge: Edward T. McLoughlin

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COUNTY COURT : DUTCHESS COUNTY

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PRESENT: HON. EDWARD T. McLOUGHLIN
Dutchess County Court Judge

DECISION AND ORDER

SUPPRESSION OF
PHYSICAL EVIDENCE

THE PEOPLE OF THE STATE OF NEW YORK

Ind No. 28/2016

Plaintiff,

WILLIAM V. GRADY, ESQ.

- against -

District Attorney by:

Cindy Murphy, Esq.

FRANK WHITE, JR.,

Attorney for Plaintiff

Defendant.

RYANNE G. KONAN, ESQ.

Attorney for the Defendant

The defendant has been indicted for Criminal Possession of a
Controlled Substance in the Third Degree, a Class B Felony (Penal
Law §220.16[1]) and Criminal Possession of a Controlled Substance
in the Fourth Degree, a Class C Felony (Penal Law §220.09[1]).

The defendant has moved for suppression of physical evidence
found on his person when he was stopped and placed under arrest on
March 9, 2016 in the City of Poughkeepsie, County of Dutchess,
State of New York. That property includes a quantity of
narcotics, a sum of United States currency, as well as two packets
of pot pourri.

A Pre-Trial Hearing was held on September 22, 2016.

I give credence to the testimony of the witnesses to the
extent indicated in the Findings of Fact.

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FINDINGS OF FACT

On March 9, 2016, City of Poughkeepsie Police Officer Robert Haberski was on routine patrol in the area of Winnikee Avenue and Mansion Street in the City of Poughkeepsie. At that time, Officer Haberski was stopped at a traffic light and observed a black Toyota Corolla proceed westbound through the intersection on Mansion Street. The defendant was the operator of the vehicle and was the lone occupant of the same. Officer Haberski had prior knowledge that the defendant had a suspended driver's license.

Officer Haberski informed fellow officer Daniel Horton of his observation and requested that police headquarters be contacted to verify the status of the defendant's license.

City of Poughkeepsie Police headquarters confirmed that the defendant's license was suspended and based upon the same, Officer Haberski activated his emergency lights on his patrol vehicle. Officer Haberski followed the defendant's vehicle where it ultimately came to a stop on Thompson Street.

Officer Haberski approached the defendant's vehicle on the driver's side. Officer Horton approached on the passenger side. A conversation ensued between Officer Haberski and the defendant regarding the defendant's possession of a valid driver's license. The defendant was then asked to provide Officer Haberski with some form of identification.

Officer Haberski observed that the defendant had bulges in

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each of his front pants pockets, and in an attempt to locate his identification, was putting his hands in each of those pockets. At this point, Officer Haberski became concerned for his safety, opened the driver's door and ordered the defendant to shut off the car and exit the vehicle. The defendant did exit the vehicle and was immediately placed under arrest for Aggravated Unlicensed Operation, in violation of Vehicle and Traffic Law §511. Upon being informed that he was under arrest, the defendant was handcuffed.

Upon placing the defendant under arrest, Officer Haberski conducted a search incident to the arrest. The officer searched the defendant's pants pockets and removed a large sum of currency from his left pocket and additional currency as well as two packets of pot pourri from the defendant's right pocket. Officer Haberski also checked the defendant's waistband area where he observed an item tucked into the same. Officer Haberski removed the object and determined it to be a white napkin containing two baggies. One baggie contained a quantity of white chalky substance which appeared to be crack cocaine and the other contained small zip lock baggies, the contents of which were unknown at that time.

The item taken from the defendant's person was subsequently field tested and confirmed to be crack cocaine.

CONCLUSIONS OF LAW

I find that Officer Haberski had probable cause to stop the

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defendant's vehicle and place him under arrest for Aggravated Unlicensed Operation. Officer Haberski personally observed the defendant operating a motor vehicle in the City of Poughkeepsie and independently confirmed that the defendant's driver's license was suspended. See People v. Clayton, 57 AD3d 557 (2nd Dept. 2008), apl. den. In Re Clayton 12 NY3d 852. In Clayton, supra, City Of Poughkeepsie Police Officers stopped the defendant's vehicle after observing him operating the same and having confirmed by police dispatch that the defendant's driver's license was suspended. This provided the police probable cause to arrest the defendant.

Nor can an argument be made that the stop was pre-textual. Officer Haberski had probable cause to stop the defendant based upon his personal observation of the defendant operating a motor vehicle and the confirmation that the defendant's driving privileges were suspended. See Whren v. United States, 517 US 806; People v. Robinson, 97 NY2d 341.

Because the City of Poughkeepsie Police were authorized to arrest the defendant, they were likewise authorized to search him incident to that lawful arrest. Clayton, supra; People v. Troiano, 35 NY2d 476.

The defendant has cited People v. Jimenez, 22 NY3d 717 for the proposition that the police were not authorized to conduct a search incident to an arrest in the instant case. However, I find that Jimenez, supra, and its progeny involve the very limited

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circumstance of law enforcement's authority to conduct a search incident to arrest of items a defendant may be carrying. However, none of the cases cited by defense involve the search of the defendant's person.

The defendant's citation to People v. Julio, 245 AD2d 158 (1st Dept. 1997) is also not applicable to the instant facts. In that case, the police conducted a search of the defendant's bag after the defendant has been handcuffed and surrounded by police officers.

In the instant case, the search was made of the defendant's person. The drugs in question were located in his waistband.

Even if the Court were to entertain the analysis put forth in People v. Jimenez, supra, the defendant's argument would fail. In Jimenez, the Court determined that when a search incident to arrest is being conducted under that case's unique circumstances, there are two factors for the court's consideration.

The first imposes a spatial and temporal limitation to insure that the search is not significantly divorced in time or place from the arrest. The second is that the People must demonstrate the presence of exigent circumstances. The Court then went on to explain that exigent circumstances involve the safety of the public and/or the arresting officer, as well as the protection of evidence from destruction or concealment.

Utilizing this analysis, clearly the search of the defendant was close in time and place to that of his arrest. The defendant

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was arrested and almost immediately a search incident to that arrest was conducted.

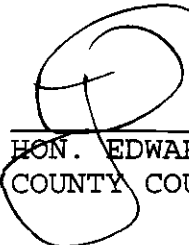
Likewise, the inculpatory evidence was found on the defendant's person in an area where it could have subsequently been destroyed or concealed by the defendant if the police had not properly conducted their search incident to the arrest.

This case is almost identical to that in People v. Davis, 32 AD3d 445 (2nd Dept. 2006), lv. den. 7 NY3d 924. In Davis, supra, the defendant was properly arrested for committing a traffic offense and it was ascertained that his driver's license was suspended. The police had probable cause to then arrest the defendant and cocaine was recovered from his person during the subsequent search incident to that lawful arrest. The Court in Davis, held that the evidence was properly admissible against the defendant.

Based upon the foregoing, the defendant's motion is denied in its entirety.

This constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
October 4, 2016



HON. EDWARD T. McLOUGHLIN
COUNTY COURT JUDGE

TO: Cindy Murphy, Esq.
Dutchess County District Attorney's Office
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