

**People v Smith**

2015 NY Slip Op 32919(U)

November 4, 2015

County Court, Erie County

Docket Number: 14-1228

Judge: Thomas P. Franczyk

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**STATE OF NEW YORK  
COUNTY OF ERIE  
ERIE COUNTY COURT**

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**PEOPLE OF THE STATE OF NEW YORK**

**v.**

**DECISION & ORDER  
INDICTMENT # 14-1228**

**TARELL SMITH aka SHELLITO DONMORE  
DEFENDANT**

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**APPEARANCES:**

**Patrick Shanahan, ADA  
Erie County District Attorney's Office  
25 Delaware Avenue  
Buffalo, NY 14202**

**For the People**

**David R. Addelman, Esq.  
69 Delaware Avenue, Suite 602  
Buffalo, NY 14202**

**For the Defendant**

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The defendant, charged with Criminal Possession of a Weapon 2<sup>nd</sup> degree (PL 265.03 [3]) moves to suppress evidence consisting of a loaded .45 caliber pistol relinquished by him after a stand-off with Buffalo Police Officers following the stop of a minivan in which he was a passenger on Latour Street.

The vehicle was stopped at 7:12 p.m. on June 18, 2014 as part of a traffic safety checkpoint that was to take place, pursuant to a written police directive, at Walden and Sycamore. The actual roadblock was set up 11 blocks west of that location at Walden and

Sobieski, and two officers (Joseph Hassett and John Beyer) were detailed to Latour Street for the express purpose of stopping motorists who were avoiding the roadblock.

According to Captain Patrick Roberts, the purpose of the roadblocks (which occur daily, sometimes multiple times) is to promote traffic safety by checking for Vehicle and Traffic violations (e.g. moving, equipment and safety belt) and to ensure that vehicles are properly registered and inspected. Officers also instruct motorists with young children on the importance of using proper safety seats. While motorists, in Roberts' experience, typically comply with the Vehicle and Traffic Laws in police presence, he did not provide any statistical information as to the effectiveness of the roadblock in accomplishing its objectives. He also did not know how many vehicles had been stopped at this roadblock or how many summonses had been issued.

The written directive authorizing this roadblock (Peoples exhibit #6) describes its purpose as "roadway safety." Officers assigned to it are instructed to: make the roadblock obvious with overhead flashing lights, avoid being unreasonably intrusive, minimize avoidance, stop any vehicle that attempts to avoid the roadblock, check all occupants for seatbelts, check the vehicle for registration and inspection stickers and act on probable cause arising from either mobile "plate reader" hits or plain view observations. The designated time frame of the roadblock was from 17:30 hrs. to 18:50 hrs. (5:30 p.m. to 6:50 p.m.). All officers assigned to the roadblock were supposed to be given a copy of the directive prior to the roadblock. (Officer Hassett testified that it was distributed at the 3:15 p.m. briefing and was on file at the station but he was not personally given a copy). According to Captain Roberts, the roadblocks were supposed to occur within the designated time limits unless more time was needed to issue a summons or make an arrest arising from a timely stop.

At 7:12 p.m., Officers Hassett and Beyer stopped the minivan in question in the middle of Latour Street as it proceeded southbound toward Walden from Genesee Street. Neither officer could say that the vehicle was avoiding the checkpoint inasmuch as it was still heading toward it rather than away from it. In fact, they could not have known one way or the other until it reached the corner and either turned left on Walden (toward the checkpoint) or right (away from the checkpoint). As Officer Beyer testified, “we don’t know who is trying to avoid the roadblock. That’s why we stopped everybody.”

As the officers approached the van, they observed that the female driver was not wearing a seatbelt. Hassett pointed out that fact which she acknowledged and he directed her to produce her license and registration. She appeared hesitant and ill-at-ease but attempted to comply. At the same time, Beyer observed the defendant fidgeting in the rear passenger area and reaching into his waistband with his hand. The defendant directed the driver to pull off.

Beyer proceeded to the other side of the vehicle and directed the defendant to put his hands up. At that point, the defendant pulled out a pistol, racked a round and partially stood up. Hassett testified that he pulled the driver out of the vehicle and removed the keys from the ignition. The defendant got into the front seat and then held the gun to the head of the front seat passenger. It was right around this time that Captain Roberts arrived on the scene. The SWAT team was called in and, after a standoff in which the defendant threatened to shoot the passenger and then himself, he gave up the weapon.

In his pro se letter (submitted in addition to defense counsel’s memorandum of law), the defendant mentioned the “conflicting stories” of Officers Hassett and Beyer, citing the felony complaint. (The main inconsistency noticed by this court was the timing of when the driver

handed over her licence and registration. Hassett testified that it was interrupted by the defendant's pulling of the gun and Beyer made it sound like she complied on the spot).

#### Analysis and Conclusion

Traffic checkpoints are generally considered to be permissible seizures under the Fourth Department when they are designed to effectuate specific programmatic objectives (other than general crime control), are carried out in a uniform, non-arbitrary way in accordance with written rules intended to deter specific activity, and minimize the exercise of individualized discretion on the part of the executing officers. (See People v. Scott 63 NY 2d 578 [1984], People v. La Fountain 283 AD 2d 1013 [4<sup>th</sup> dept. 2001] and People v. Jackson 99 NY 2d 125 [2005], People v. Rocket 156 Misc. 2d 641 [Pleasant Valley Justice Ct., Dutchess County, 1992]).

In People v. Edwards 101 AD 3d 1643 (4<sup>th</sup> dept. 2012), the Fourth Department upheld a City of Buffalo checkpoint, the purpose of which, as here, was to check for registration, inspection, seatbelt and other traffic related infractions. Moreover, in People v. Chaffee 183 AD 2d 208, 212 (4<sup>th</sup> dept. 1992), the court held that it was permissible to pursue and stop checkpoint avoiders lest checkpoints lose their deterrent effect and purpose.

In this case, however, while Officers Beyer and Hassett were assigned specifically to stop runaway traffic, there was no indication that the minivan was actually avoiding the checkpoint. By stopping all motorists on Latour because they did not know who was avoiding the checkpoint, the officers were exercising their own unbridled discretion rather than following the directive's command to "stop any vehicle that attempts to avoid the roadblock."

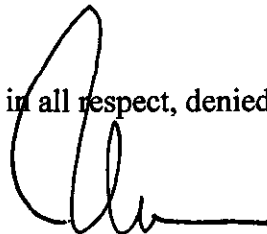
There was also no explanation for conducting the roadblock at Walden and Sobieski when the directive clearly stated that it was to be located at Walden and Sycamore. In addition,

there was no justification offered for stopping the minivan 21 minutes after the roadblock was supposed to have ended. And, as noted above, there was no statistical information provided to show that the roadblock constituted a reasonably effective means of promoting traffic safety. ( In re Muhammad F. 94 NY 2d 136 [1996]).

This court agrees with the defense, therefore, that the officers did not properly carry out the orders of the roadblock directive. This court also finds, however, that the defendant's conduct in removing and racking a pistol, getting into the front seat and putting a loaded gun to the head of the front seat passenger, constituted an independently unlawful act that severed the causal connection to the unlawful stop of the vehicle. (People v. May 100 AD 3d 1141 [4<sup>th</sup> dept. 20012], People v. Wofford 115 AD 3d 1332 [4<sup>th</sup> dept. 2014]).

While it could be argued that the defendant would not have pulled the gun but for the stop, he also could have sat still and, had the officers gone beyond mere issuance of a summons to the driver (or ordered him out and patted him down without reasonable suspicion), he would have been on much firmer ground for purposes of suppression. Instead, he gratuitously and unnecessarily escalated the encounter from a traffic stop to a hostage situation and, as such, forfeited any claim of benefit under the exclusionary rule. (See People v. Rogers 52 NY 2d 522 [1981]).

Accordingly, the defendant's motion to suppress is, in all respect, denied. This decision shall constitute the order of the court.



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**Thomas P. Franczyk**  
Erie County Court Judge

dated: NOV 04 2015

**GRANTED**

NOV 04 2015  
BY Kimberly King  
KIMBERLY KING