

People v Barto
2016 NY Slip Op 32667(U)
December 2, 2016
County Court, Wayne County
Docket Number: 16-30
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
Town of Lyons, New York on the
24th day of August, 2016.

PRESENT: Honorable Daniel G. Barrett
County Court Judge

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE
THE PEOPLE OF THE STATE OF NEW YORK

-vs-

THOMAS BARTO,

Defendant

DECISION ON
PROBABLE CAUSE
HUNTLEY AND MAPP
HEARING
Ind. No. 16-30

Appearances - People - Christopher Bokelman Esq.
Defendant - Richard C. Roxin, Esq.

The Defendant filed a motion requesting a Probable Cause, Huntley and Mapp Hearing. The same was conducted on the above date. Testimony and evidence was provided by the District Attorney's Office. The Defendant did not testify nor provide any other evidence. Since the hearing date the Defendant moved to renew and reargue the Huntley Hearing. The Court denied that motion. Both counsel have submitted closings and/or memorandum of law with regard to their position.

Admitted into evidence were the following documents:

- Exhibit 1 - Vehicle impound and inventory record of Defendant's vehicle on August 9, 2015;
- Exhibit 2 - Statement of Defendant given to Trooper Wasko on August 9, 2015 at the accident scene at 1:37 P.M. and 2:01 P.M.;
- Exhibit 3 - A copy of the Miranda Warnings given to the Defendant at the State Police Barracks in Waterloo by Trooper Wasko at 4:39 P.M.;
- Exhibit 4 - Statement of Trooper Wasko on August 9, 2015;
- Exhibit 5 - Consent form of Defendant on August 9, 2015 at 8:15 P.M. consenting to a blood draw at Geneva General Hospital.

Trooper Matthew Barrett testified that he came upon an accident on Route 14 north of Ridge Road in Sodus, New York on August 9, 2015. He saw a couple of people standing on the right shoulder of the road and a motorcycle. When he arrived at the scene he realized that it was an accident and contacted 911. He saw a male and female victim. He felt the pulse of the male victim and determined he was probably deceased. He then provided first aid to the female victim until the first responder came to the scene. He went to speak to the operator of the truck that had apparently been in the accident with the motorcycle. The driver of that truck was Thomas Barto. Mr. Barto indicated he was driving north when he saw the motorcycle about one-half mile away and the next thing he knew he was along the side of the road and being notified by On-Star that he had been in an accident. Trooper Barrett requested that an investigator and sergeant be dispatched to the scene. He had no further interaction with Mr. Barto. However he did testify that the Defendant's responses to his questions were appropriate, that his speech was clear and there was no slurring.

Trooper Christopher D. Lander testified that he arrived at the scene of the accident. He blocked the road fifty (50) yards north to block any southbound traffic. He did have a conversation with Trooper Barrett. He also spoke to Investigator Bauer at the scene. It became his job to inventory the pick up and impound the same.

While he was searching the Defendant's vehicle he found a blue/white cooler in the back seat. There was a cigarette box in the cooler. When he inspected the cigarette box he found three bags of a substance he believed to be marihuana. He eventually did seal that bag and take it to the evidence locker at the Wolcott barracks.

When he went to search the Defendant's pick up truck he found that the door was open. There was no noticeable smell or aroma of marihuana. There was no drug paraphernalia in the truck. The cooler was found on the floor in the back seat area behind the driver's side.

Trooper Matthew Kent arrived at the scene. It became his role to make sure the scene was safe and lock up any vehicles. He was directed by Investigator Bauer to take over the standard field sobriety tests of the Defendant. He knows that the HGN test was done by Trooper Schepis. Trooper Kent advised that he was experienced in doing field sobriety tests.

He asked the Defendant to do the walk and turn test. He advised the Defendant failed that and that his balance was off, he missed heel to toe several times, he took the wrong number of steps and did the wrong turn. In addition he tried to balance himself on the turn.

With regard to the one leg test the Defendant raised his left leg for approximately three (3) seconds. Then he tried to raise his left leg again for about twelve (12) seconds and on the third time for approximately sixteen (16) seconds. In addition the Defendant swayed and hopped while he was attempting to raise his left leg.

The Defendant did do the finger count test and passed the same. On the Romberg test he failed that test because he was swaying and he only counted for approximately twenty (20) seconds when he was required to do for at least thirty (30) seconds.

Trooper Kent testified that in his opinion the Defendant was under the influence of something other than alcohol. At that point he was aware the Defendant denied using alcohol, drugs or any prescription medication.

Trooper Kent acknowledges the Defendant seemed to understand his questions, that he answered his questions appropriately, that he did not fall down, stagger or stumble. He did not smell marihuana on the Defendant and the Defendant's eyes did not seem glazed or blood shot.

Trooper Wasko then arrived at the scene. It was his role to obtain a statement from the Defendant. He talked with the Defendant and the Defendant admitted driving the truck but he doesn't remember the collision. The Defendant states he saw the motorcycle about one-half mile coming from the north and the next thing he knows he was in an accident. The Defendant stated he thinks he might have blacked out.

Trooper Wasko was then directed by Investigator Bauer to obtain a written statement. He testifies that it was a hot day and that he then took the Defendant into his patrol car where there was air conditioning. He had the Defendant tell his story first. The second time through he typed out a statement on the computer. The Defendant read it afterwards, stated it was accurate and then signed the same at 2:01 P.M.. He was then directed by Investigator Bauer to add to the statement the Defendant's response as to whether he had any medical conditions. The Defendant stated he did not. Trooper Wasko added that to the statement and the Defendant initialed the same. At that time he also took the Defendant's cell phone and the Defendant consented to allow the State Police to search the same.

The Trooper admits that he took the statement as shown by Exhibit 2 without giving the Defendant his Miranda Warnings. However at that time he was merely taking a statement from the Defendant as to what he remembered about the accident.

After speaking with the Defendant Trooper Wasko was directed to take the Defendant to see a drug recognition expert, Trooper Campbell, at the Waterloo State Police Barracks. Trooper Wasko was advised by Investigator Bauer at the time that marihuana had been found in the Defendant's truck and the Defendant was aware of it before they left to go to Waterloo.

When Trooper Wasko arrived at the barracks he met with Trooper Campbell. Trooper Campbell learned that marihuana had been found in the Defendant's truck. He thereafter gave the Defendant's his Miranda Warnings as shown by Exhibit 3. After the Miranda Warnings the Defendant was speaking to Trooper Campbell and admitted to smoking a small bowl of approximately .5 grams of marihuana at approximately 7:30 A.M. on August 9, 2015.

Trooper Wasko was then directed to obtain a blood sample from the Defendant. He spoke to the Defendant. The Defendant signed a consent form as shown by Exhibit 5 at approximately 5:15 P.M.. Trooper Wasko took the Defendant to Geneva General Hospital to draw the blood. The Defendant did not ask for a lawyer or make any phone calls. He also did not threaten the Defendant about taking the test nor did he make any promises to the Defendant if in fact he took the test.

Trooper Wasko testifies he was with the Defendant for approximately five to six hours on August 9, 2015. He was able to understand the Defendant and his speech was not slurred or mumbled. He gave appropriate responses to questions. He saw the Defendant walk to and from him police vehicle at the accident scene, to and from the Waterloo barracks and to and from the hospital. He stated the Defendant had no problem walking.

The Defendant was not placed under arrest on August 9, 2015. Trooper Wasko took the Defendant to the Williamson State Police Barracks and another trooper took him home.

Investigator Thomas Crowley then testified. He has been with the State Police 22 years and is a senior investigator. The Thomas Barto case was assigned to in October, 2015.

Investigator Crowley received the toxicology reports and determined he needed to speak to the Defendant. He appeared at the Defendant's residence on February 3, 2016 at approximately 5:00 P.M.. The Defendant rents the bottom floor of a residence at 931 Ridge Road, Ontario, New York.

Investigator Crowley testified he told the Defendant he needed to speak to him about the toxicology reports. He said the Defendant was cooperative and agreed to speak to him. He did identify himself and show the Defendant his badge. He did not give the Defendant any Miranda Warnings. He was aware the Defendant received his Miranda Warnings on August 9, 2015.

Investigator Crowley testified the Defendant stated he had slept at a female friend's house on August 8, 2015. He awakened at approximately 4:00 A.M. and went to his home. He brought a recliner from his friend's home and unloaded that. Then had some breakfast, watched TV and took two Aleve. The Defendant stated at approximately 7:30 A.M. or 8:00 A.M. he had one bowl of marihuana. Around 11:00 A.M. he ate lunch. He then smoked another bowl of marihuana about 11:00 A.M.. He then mowed the lawn and decided to go fishing.

Investigator Crowley testifies that he had told the Defendant that his initial statement was not consistent with the toxicology results, that is that the Defendant only smoked one bowl of marihuana at 7:00 A.M.. That is when the Defendant admitted to smoking another bowl at 11:00 A.M.. In addition he acknowledged that he smoked three to four times a week. Investigator Crowley advised the Defendant he wanted to record the conversation or write a statement for the Defendant to sign. The Defendant declined to do that. In addition Investigator Crowley admitted the reason he went to the Defendant's residence was to confront him about the toxicology reports which were inconsistent with the Defendant's previous statements to the State Police on the day of the accident, including his admission to Trooper Campbell about smoking marihuana at approximately 7:30 A.M. on August 9, 2015.

The Defendant firstly argues that there is no probable cause for the Defendant's arrest. However the Court notes the Defendant was not arrested on August 9, 2015. The Defendant was only arrested after he was indicted by the Grand Jury on March 23, 2016. The Court previously inspected the Grand Jury Minutes and issued a Decision on or about July 20, 2016 finding that there was sufficient evidence presented to the Grand Jury regarding the charges the Defendant was indicted for.

Obviously the State Police did not have the results of the toxicology report on August 9, 2015. That information was only available until later. That is when Investigator Crowley confronted the Defendant about his previous statement to Trooper Campbell about smoking marihuana only at approximately 7:30 A.M. on August 9, 2015. The Defendant then admitted to Investigator Crowley that he also smoked at 11:00 A.M. and smoked three to four times a week leading up to the accident. In addition Trooper Kent testified that the Defendant failed certain field sobriety tests and in his opinion the Defendant was under the influence of something other than alcohol.

Secondly the defense requests the Court suppress the statements made by the Defendant to Trooper Wasko while in the patrol car at the accident scene as set forth in Exhibit 2. Trooper Wasko testified that he was asked to obtain a statement from the Defendant regarding the accident itself. Trooper Wasko states that he asked the Defendant to sit in his patrol vehicle where there was air conditioning. Trooper Wasko testifies he was not aware when he was speaking to the Defendant that marihuana had been found in the Defendant's vehicle. The trooper did not ask the Defendant any inculpatory questions but merely asked the Defendant what happened.

The Court finds that Trooper Wasko's questioning was investigatory in nature, that is to obtain information from the Defendant to help him in a determination of how the accident occurred. The Defendant was not in custody at the time and voluntarily talked to Trooper Wasko.

Trooper Wasko took the Defendant to see Trooper Campbell at the Waterloo Police Barracks, he gave the Defendant his Miranda Warnings at approximately 4:39 P.M. as shown by Exhibit 3. The trooper had learned prior to leaving the accident scene in Sodus that marihuana had been found in the Defendant's vehicle. The Defendant voluntarily waived his Miranda Warnings and then spoke to Trooper Campbell. A statement of that conversation is shown in Exhibit 4.

The Court finds those statements were voluntarily made by the Defendant after being advised of his Miranda rights and waiving the same.

In addition the Court finds that the marihuana seized at the scene from the Defendant's vehicle did not require probable cause. The marihuana seized is at least preliminarily admissible at trial.

The Defendant was in a fatal accident. It was apparent that he caused the accident. The police are allowed to do an investigation at the accident scene and to search and inventory the defendant's vehicle. Inventory searches do not require probable cause, People v Redden, 27 A.D. 3d 1173, People v Quackenbush, 88 N.Y. 2d 534.

The Defendant further argues that the statements made by the Defendant to Investigator Crowley at his residence on or about February 3, 2016 were involuntarily made and should be suppressed. The Court notes that the Defendant was at his home where the conversation took place. He invited the Investigator into his home. This was not a custodial interrogation therefore no Miranda Warnings were required to be given. The Defendant voluntarily made the statement to Investigator Crowley at the time. The Defendant was certainly aware that he did not have to make a statement at the time as evidenced by his advising Investigator Crowley he did not want his statement recorded nor did he wish to sign a statement.

Lastly the Defendant argues that the blood sample drawn at Geneva General Hospital on August 9, 2015 should be suppressed in that the Defendant did not voluntarily consent to the drawing of his blood. The Court notes that admitted into evidence as Exhibit 5 is the consent form signed by the Defendant while in the presence of Trooper Wasko.

Trooper Wasko testified that he asked the Defendant about voluntarily giving a blood sample and the Defendant agreed. The Trooper testified that he did not in any way threaten the Defendant, promise anything to the Defendant or advise anything would happen to him as a result of his refusal to give a blood sample.

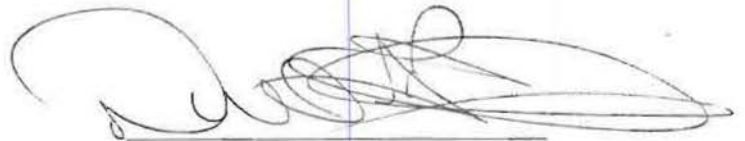
The Defendant was not under arrest at the time.

The uncontested evidence establishes the Defendant agreed to the administration of a blood test, People v Gallow, 133 A.D. 3d 1088. Where the police possess reasonable grounds to believe that a driver has been driving under the influence, they are authorized to direct that the defendant's blood be drawn with the voluntary consent of the driver to submit to a chemical test. They are not required to arrest the driver before obtaining such consent. Arrest requirement in the implied consent law has no application where a driver expressly and voluntarily consents to the administration of a blood alcohol test, People v Centerbar, 80 A.D. 3d 1008.

The Court finds that the Defendant's statements as testified to are voluntarily made and are admissible at trial. That in addition the search of the Defendant's vehicle was lawful, that the results of that search are admissible and that lastly the Defendant voluntarily consented to providing a sample of his blood to the State Police.

The Defendant's motion to dismiss the case for lack of probable cause, for suppression of the Defendant's statements and for suppression of the blood sample are hereby denied.

Dated: December 2, 2016
Lyons, New York

A handwritten signature in black ink, appearing to read 'Daniel G. Barrett', written over a horizontal line.

Daniel G. Barrett
County Court Judge