

**People v Noonan**

2018 NY Slip Op 32289(U)

September 19, 2018

City Court of Peekskill, Westchester County

Docket Number: CR-1253-18

Judge: Reginald J. Johnson

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CITY COURT: CITY OF PEEKSKILL  
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION &  
ORDER  
CR-1253-18

Brendan M. Noonan,

Defendant.

-----X

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HON. REGINALD J. JOHNSON

In this case, the Defendant was charged with Common Law Driving While Intoxicated [VTL 1192.3], Aggravated Unlicensed Operation in the Third Degree [VTL 511.1(a)], Refusal to Take Breath Test [VTL 1194(1)(b)], Improper/No Signal [VTL 1163(d)], and Failure to Change Address [VTL 2285.3]. After open file discovery was completed, the Defendant requested a combined Dunaway/Huntley/Mapp hearing.

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### Procedural History

On April 19, 2018, the Defendant was arraigned with counsel and entered a plea of not guilty to all charges.

On July 16, 2018, open file discovery was completed. At that time, the Defendant requested, with the People's consent, a combined Dunaway/Huntley/Mapp Hearing scheduled for July 31, 2018.

On July 31, 2018, the Court held a Dunaway/Huntley/Mapp hearing in this case.

### Findings of Fact

A Dunaway/Huntley/Mapp hearing was conducted by this Court on July 31, 2018. The People presented Peekskill Police Officer Adam Henry as its witness. The Defendant neither testified nor presented any witnesses on his behalf. The Court considered the testimony of P.O. Henry to be credible. The Court now makes the following findings of fact:

P.O. Henry testified that on April 16, 2018, he was assigned to patrol the area of Washington Street in a marked vehicle during the 4:00 p.m. to 12:00 midnight shift. At or about 10: 47 p.m., he observed a 2014 White Volkswagen Passat parked opposite 810 Washington Street, in front of Kyle's Pub, facing east bound. The Passat moved from a parked position without signaling, after which P.O. Henry

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began to follow it. The Passat proceeded on Washington Street and then made a right turn onto Franklin Street and travelled east bound, and then it made a left turn onto Union Ave and travelled north bound when P.O. Henry effected a traffic stop at or about 300 Union Ave.

Upon approaching the vehicle, P.O. Henry asked the Defendant for his license and registration when he detected a strong odor of alcohol emanating from his breath and person, glassy eyes, and slurred speech. He then asked the Defendant about how much he had been drinking and he replied that he had one glass of Chardonnay wine while at Kyle's Pub celebrating a co-worker's going away party. P.O. Henry then asked the Defendant to exit his vehicle to conduct a DWI investigation. The Defendant performed the Horizontal Gaze Nystagmus, One Leg Stand, and Walk and Turn Standardized Field Sobriety tests [SFSTs] and failed them. P.O. Michael Lawrence arrived on the scene to administer the Alco-Sensor [portable breath test] test to the Defendant but he refused to submit to same. The Defendant was then placed under arrest for driving while intoxicated and transported back to headquarters.

At headquarters, P.O. Henry read DWI Refusal Warnings to the Defendant and then requested that he submit to a chemical test of his breath on three (3) separate occasions but he refused; thereafter, P.O. Henry prepared a Report of Refusal to Submit to Chemical Test. P.O. Henry then issued Miranda warnings to

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the Defendant who then stated that he had one glass of Chardonnay wine at Kyle's Pub. The Defendant was then charged with Common Law Driving While Intoxicated [VTL 1192.3], Aggravated Unlicensed Operation in the Third Degree [VTL 511.1(a)], Refusal to Take Breath Test [VTL 1194(1)(b)], Improper/No Signal [VTL 1163(d)], and Failure to Change Address [VTL 2285.3]. Defendant was issued a desk appearance ticket and released from custody.

### Issues Presented

Did P.O. Henry have probable cause or reasonable suspicion to effect a lawful vehicle stop of the Defendant's vehicle?

Did the People satisfy their burden that the statements made by the Defendant were voluntarily and intelligently made beyond a reasonable doubt?

Did the People satisfy their burden that any evidence obtained in course of Defendant's arrest was lawfully obtained?

For the reasons that follow, the Court finds that P.O. Henry had probable cause or reasonable suspicion to effect a lawful vehicle stop of the Defendant's vehicle on the night in question. Further, the Court finds that the Defendant's statements to P.O. Henry were knowingly, voluntarily and

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intelligently made beyond a reasonable doubt. The Court also finds that any evidence obtained during Defendant's arrest was lawfully obtained.

### Legal Analysis

At a suppression hearing, the Defendant bears the ultimate burden of proving, by a preponderance of the credible evidence, that the challenged evidence should not be used against him [see, *People v. Barrios*, 28 N.Y.2d 361, (1971); *People v. Thomas*, 291 A.D.2d 462 (2d Dept. 2002)]. However, the People bear the ultimate burden of going forward to establish the legality of the police conduct in the first instance [see, *People v. Hernandez*, 40 A.D.3d 777 (2d Dept. 2007)].

At a *Dunaway* hearing, the People bear the burden of establishing by a fair preponderance of the evidence that the Defendant's arrest was lawful [see, *Dunaway v. New York*, 442 U.S. 200 (1979)]. In the context of a suppression hearing based on a vehicle stop, the People carry a less onerous burden than their burden of proof at trial [see, *People v Saylor*, 166 A.D.2d 899 (4<sup>th</sup> Dept. 1990) (Court held that issue at suppression hearing was not whether the defendant was speeding but whether the police officer had reasonable suspicion to believe defendant was speeding); *People v. Robinson*, 97 N.Y.2d 341, 354 (2001) ("the decision to stop a vehicle is reasonable where the police

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have probable cause to believe that a traffic infraction has occurred"); *People v. Guthrie*, 25 N.Y.3d 130, 133 (2015)].

No legal analysis of a police-citizen encounter would be complete without a reference to and consideration of *People v. DeBour*, 40 N.Y.2d 210 (1976). In *DeBour* the Court of Appeals set forth a graduated four level test by which police-citizen encounters are to be analyzed. Specifically, a level one encounter permits the police to approach a citizen and request information if the police have an objective, credible reason not necessarily indicative of criminal activity. A level two encounter permits the police to conduct a common law right of inquiry (a more intrusive inquiry than permitted under Level I) where the police have a founded suspicion that criminal activity is afoot. A level three encounter permits the police to detain and even conduct a frisk for weapons where the police have a reasonable suspicion that a crime has been, is being or is about to be committed. A level four encounter permits the police to arrest a person where the police have probable cause to believe that the person committed a crime [see also, *People v. Moore*, 6 N.Y.3d 496 (2006); *People v. McIntosh*, 96 N.Y.2d 521 (2001)].

It is well settled law that the decision to stop an automobile is objectively reasonable when the police officer has probable cause to believe

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that a violation of the vehicle and traffic law occurred [see, *People v. John*, 119 A.D.3d 709 (2d Dept. 2014); *People v. Miller*, 57 A.D.3d 568, 570 (2d Dept. 2008)].

As stated by the Court of Appeals, probable cause 'does not require proof sufficient to warrant a conviction beyond a reasonable doubt but merely information sufficient to support a reasonable belief that an offense has been or is being committed or that evidence of a crime may be found in a certain place.' Rather, police officer who can articulate credible facts establishing reasonable cause to believe that someone has violated a law has established a reasonable basis to effectuate a [traffic] stop' [*People v. Guthrie*, 25 N.Y.3d 130, 133-34 (2015) (citation omitted)].

Turning to the case at bar, the People argue that P.O. Henry's vehicle stop of the Defendant was lawful and justified because he personally observed the Defendant move from a parked position without signaling in violation of VTL §1163(d). Further, the People contend that since the traffic stop was lawful any evidence obtained therefrom was lawful as well—to wit, evidence of the Defendant's intoxication. The People also argue that any statement made by the Defendant roadside was not subject to Miranda and therefore admissible. Lastly, the People contend that Defendant's alcoholic

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breath, glassy eyes, slurred speech, failed SFSTs and persistent refusal to submit to a chemical test constituted probable cause for his arrest.

The Defendant argues that P.O. Henry made a rush to judgment when he stopped his vehicle on the night in question. Specifically, he argues the initial traffic stop of his vehicle based on an alleged violation of VTL §1163(d) may have been a pretext stop in search of other evidence of a crime. Lastly, the Defendant argues that he should have been Mirandized roadside and informed that he had a right to refuse to perform the SFSTs.

#### Dunaway

Contrary to the Defendant's contention, the undisputed testimony from P.O. Henry was that he personally observed the Defendant move from a parked position without signaling in violation of VTL §1163(d). Since P.O. Henry personally observed the Defendant commit a violation of VTL §1163(d), he was justified in stopping his vehicle [see, *People v. John*, 119 A.D.3d 709 (2d Dept. 2014); *People v. Miller*, 57A.D.3d 568, 570 (2d Dept. 2008); *People v. Robinson*, supra; *People v. Guthrie*, supra.]. Defendant's claim that P.O. Henry's traffic stop of his vehicle was a pretext stop<sup>1</sup> in search of other

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<sup>1</sup> "A pretext stop has generally been defined as a police officer's use of a traffic infraction as a subterfuge to stop a motor vehicle in order to investigate the driver or occupant about an unrelated matter" [see, *People v. Robinson*, 271 A.D.2d 17, \_\_\_, (1<sup>st</sup> Dept. 2000), order aff'd, 97 N.Y.2d 341 (2001)].

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evidence of a crime is unavailing, inasmuch as P.O. Henry's underlying intent or motivation is irrelevant for 4<sup>th</sup> Amendment purposes so long as he had probable cause to believe that the Defendant committed a traffic infraction [see, *Whren v. U.S.*, 517 U.S. 806 (1996) (Court held that officer's underlying intent is irrelevant so long as he had probable cause to believe the defendant committed a traffic infraction)]. In *People v. Robinson*, 97 N.Y.2d 341, 346 (2001) (citation omitted), the Court of Appeals adopted the holding in *Whren*, legalizing pretext stops in New York, and stated:

The issue here is whether a police officer who has probable cause to believe a driver has committed a traffic infraction violates article I, §12 of the New York State Constitution when the officer, whose primary motivation is to conduct another investigation, stops the vehicle. We conclude that there is no violation, and we adopt *Whren v. United States* as a matter of law. \*\*\*

After P.O. Henry conducted a lawful traffic stop of the Defendant's vehicle, he approached the vehicle and noticed an odor of alcohol emanating from Defendant and that he had slurred speech and glassy eyes. In addition,

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the Defendant failed all three (3) SFSTs administered to him roadside and he admitted to ingesting a glass of Chardonnay. Based on the aforementioned, P.O. Henry had probable cause<sup>2</sup> to arrest the Defendant for operating his vehicle in violation of VTL §1192, since the evidence established that “it is more probable than not that defendant [was] actually impaired” [*People v. Vandover*, 20 N.Y.3d 235, 239 (2012); see, *People v. Leitch*, 178 A.D.2d 864 (3d Dept. 1991) (an odor of alcohol emanating from a driver who had glassy, bloodshot eyes, who performed poorly on field sobriety tests, and who was administered an alco-sensor breath test could be arrested for DWI); *Dunaway v. New York*, supra].

Contrary to Defendant’s contention, the fact that P.O. Henry activated his emergency lights, stopped the Defendant’s vehicle and detained him momentarily after observing him commit a traffic violation constituted nothing more than a ‘routine traffic’ stop that did not render him in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966) [see, *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)](the Supreme Court held that “[t]he ...noncoercive aspect of ordinary traffic stops prompts us to hold that persons

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<sup>2</sup> The Criminal Procedure Law (CPL) uses the phrase “reasonable cause” in lieu of “probable cause” (see, CPL §70.10(2) but the phrases are legally synonymous in that “[r]easonable cause means probable cause” [*People v. Maldonado*, 86 N.Y.2d 631, 635 (1995)].

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temporarily detained pursuant to such stops are not ‘in custody’ for purposes of *Miranda*’)].<sup>3</sup>

Further, it is well settled law that since “[t]here is no statutory or other requirement for the establishment of rules regulating field sobriety tests,” the police are not required to inform a defendant that he or she has a right to refuse to perform such tests [see, *People v. Sheridan*, 192 A.D.2d 1057, 1059 (4<sup>th</sup> Dept. 1993)]. Accordingly, P.O. Henry did not have an obligation to inform the Defendant that he could refuse to perform the SFSTs.

### Mapp

In *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), the Supreme Court held that “all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court” [see also, *People v. Thomas*, 164 Misc2d 721, \_\_\_, (N.Y. City Crim. Ct. 1995) (“The doctrine of the ‘fruit of the poisonous tree’ . . . is not limited to suppression of physical tangible evidence but applies as well to evidence which flows from the illegal seizure and search, such as verbal statements, identifications, tests performed upon the

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<sup>3</sup> The *Berkemer* Court stated that an “officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicions. But the detainee is not obliged to respond. And, unless the detainee’s answers provide the officer with probable cause to arrest him, he must then be released. The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*.” 468 U.S. at 439-40 (footnotes omitted) (emphasis added).

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defendant, and testimony at trial as to matters observed during the unlawful intrusion”). Here, the Court has already determined that the stop and arrest of the Defendant was lawful; therefore, any evidence obtained from him was done so incident to a lawful arrest [see, *Weeks v. U.S.*, 232 U.S. 383, 392 (1914); *Chimel v. California*, 395 U.S. 752, 763 (1969); *New York v. Belton*, 453 U.S. 454, 460-61 (1981)]. The video of the Defendant performing the SFSTs at the scene of the arrest is not suppressible because the arrest was lawful and because the video is admissible to show how the Defendant appeared on the night of his arrest [see, *People v. Scullion*, 137 A.D.3d 645, \_\_\_, (1<sup>st</sup> Dept. 2016), leave to appeal denied, 27 N.Y.3d 1139 (2016)].

### Huntley

The Supreme Court and the New York Court of Appeals held long ago that an involuntary statement is inadmissible against an accused [see, *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960); *People v. Anderson*, 42 N.Y.2d 35 (1977)]. Pursuant to *People v. Huntley*, 15 N.Y.2d 72 (1965), a defendant who alleges that his statement was involuntarily made is entitled to a pre-trial hearing at which the People are required to prove that the defendant’s statement was knowingly and voluntarily made beyond a reasonable doubt. The Court must look at the totality of the circumstances to determine if the statement was given voluntarily [see, *Arizona v. Fulminante*,

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499 U.S. 279 (1991); *People v. Hamelinck*, 222 A.D.2d 1024 (4<sup>th</sup> Dept. 1995)]. In the case at bar, the undisputed testimony by P.O. Henry is that the Defendant told him at the scene of the stop that he drank wine at Kyle's Pub and that after he informed the Defendant of his *Miranda* rights at police headquarters before questioning, the Defendant repeated his statement that he drank wine (Chardonnay) at Kyle's Pub. Any statements made by the Defendant prior to his arrest were not the product of a custodial interrogation, but the product of a noncustodial investigatory inquiry which does not implicate *Miranda v. Arizona*, 384 U.S. 436 (1966) [see, *People v. Mason*, 157 A.D.2d 859 (2d Dept. 1990); *People v. Brown*, 104 A.D.2d 696 (3d Dept. 1984) (Court held that Miranda warnings are not necessary in a DWI traffic stop)].

The Court also finds that any statements made by the Defendant after he received his Miranda warnings occurred after he knowingly and intelligently waived his Miranda rights beyond a reasonable doubt. See, *People v. Huntley*, 15 N.Y.2d 72 (1965); *People v. Rosa*, 65 N.Y.2d 380 (1985); see also, Criminal Procedure Law \*710.20.

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Any other arguments raised by the parties and not specifically addressed in this Decision and Order have been considered and either rejected or deemed moot considering the Court's ruling.

Based on the foregoing, it is

ORDERED, that the Defendant's application to suppress his statements and dismiss the charges is denied;

ORDERED, that the parties are directed to appear in Court on October 9, 2018 at 9:30 a.m. for a pre-trial conference.

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Hon. Reginald J. Johnson  
Peekskill City Court

DATED: September 19, 2018