

**People v Stewart**

2021 NY Slip Op 33149(U)

October 5, 2021

County Court, Westchester County

Docket Number: Ind. No. 2018-1251

Judge: David S. Zuckerman

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OCT 13 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
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THE PEOPLE OF THE STATE OF NEW YORK

-against-

**DECISION & ORDER**

LATONIA SHELECIA STEWART,

Ind. No.: 2018-1251

Defendant.

-----X  
**ZUCKERMAN, J.**

Defendant stands accused under Indictment No. Ind. No.: 2018-1251 of six counts of Burglary in the Second Degree (Penal Law §140.25[2]), four counts of Grand Larceny in the Third Degree (Penal Law §155.35[1]), Grand Larceny in the Fourth Degree (Penal Law §155.30[1]), Petit Larceny (Penal Law §155.25), five counts of Criminal Mischief in the Fourth Degree (Penal Law §145.00[]), Criminal Possession of Stolen Property in the Third Degree (Penal Law §165.50[]), Possession of Burglar's Tools (Penal Law §140.35), Unregistered Motor Vehicle (Vehicle and Traffic Law §401[1]a), Improper Number Plates (Vehicle and Traffic Law §402[4]), and Unrestrained Back Seat Child Less Than Four Years Old (Vehicle and Traffic Law §1229-C[1]a).

As set forth in the Indictment, it is alleged that, on or about December 20, 2017, February 12, 2018, February 17, 2018, February 22, 2018, April 16, 2018, April 30, 2018, and May 1, 2018, in Westchester County, the defendant entered or remained unlawfully into several premises, with the intent to commit crimes therein; stole property belonging to other persons; possessed stolen

property; caused damage to property belonging to other persons, and possessed burglars tools. As further set forth in the Indictment, it is also alleged that, on or about May 1, 2018, Defendant, in Westchester County, operated an unregistered motor vehicle and with said vehicle possessing improper number plates, and had a child under four riding in the back seat while not properly restrained.

On October 1, 2021, this Court conducted a *Mapp/Dunaway*<sup>1</sup> hearing to determine the admissibility of physical evidence allegedly seized from the defendant by law enforcement officers. The People initially called two witnesses: Greenburgh Police Detective Davey Jakasal (hereinafter "Det. Jakasal") and Greenburgh Police Detective Edward DeVito (hereinafter "Det. DeVito") during the morning portion of the hearing<sup>2</sup>. The People then rested and both sides delivered arguments on the motion. In the afternoon session, the court granted the People's motion to reopen the hearing whereupon the People called Greenburgh Police Detective Edgar DeMillo (hereinafter "Det. DeMillo"). Thereafter, the People rested again and, after further argument, the court reserved decision on the motion. The court finds the testimony of the People's three witnesses (Defendant did not present any witnesses at the hearing) credible to the extent noted below.

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<sup>1</sup> The People withdrew their previously-served and filed CPL 710.30(1)a Notice, obviating the ordered *Huntley* hearing, and Defendant did not request a *Harris* hearing.

<sup>2</sup>The People also presented video recorded and still photographic evidence as well as documentary evidence.

### FINDINGS OF FACT

On May 1, 2018, at about 9:45 a.m., Det. Jakasal and Greenburgh Police Department Detective Shaw were parked in a vehicle in the area of 501 Watch Hill Road, Greenburgh, New York (hereinafter "the subject premises"). They were there pursuant to an investigation into a burglary pattern in which residences were burglarized while the occupants' funerals took place (also known as funeral burglaries). The funeral of Robert Sorentino, the owner of the subject premises, was taking place on May 1, 2018 while the two detectives and other law enforcement officers (hereinafter, "the surveillance team") surveilled the area of the subject premises in unmarked cars and in plain clothes.

The surveillance team was looking, in particular, for a silver Acura Model MDX automobile, bearing a distinctive dent on the driver's-side (hereinafter "the Acura MDX"). The Acura MDX had been identified in an intelligence bulletin put out by the New York State Police as being involved in a recent Cortland funeral burglary. Det. Jakasal had also observed a video and video still shots from the Cortland funeral burglary. They displayed the Acura MDX with a distinctive dent on the driver's side being operated in the vicinity of the Cortland funeral burglary and showed a female exiting the Acura MDX and approaching that residence. Det. Jakasal was also aware that a neighbor in the area of a recent Greenburgh funeral burglary had observed a silver Acura SUV near that crime scene.

At 12:21 p.m. on that date, Det. Shaw radioed to the surveillance team that the silver Acura MDX was heading toward the surveillance area. Det. Jakasal observed the Acura MDX, driven by a female, slowly roll to a stop in front of the subject premises. Across the street, two neighbors were outside talking. Det. Jakasal observed that, although the Acura MDX had what appeared to be a proper rear license plate, it did not display a proper license plate in front; instead, displaying a vanity plate with the name "Shelly." The vehicle continued past the subject premises to the end of Watch Hill Road where it turned around and made another slow rolling stop in front of the subject premises. At that time, Det. Jakasal also observed the distinctive dent on the driver's-side door of the Acura MDX.

The vehicle then left the area and parked in front of 601 Old White Plains Road where the female driver began to look at her cell phone. At that time, Det. Jakasal radioed his dispatcher to "run" the Acura MDX front license plate and was advised that it was "not on file," which he understood to mean that the car was not registered. He then observed the Acura MDX proceed on Old White Plains Road towards Interstate Route 287.

On May 1, 2018, Det. DeVito was part of the surveillance team in a vehicle near the subject premises looking for a silver Acura Model MDX automobile, without a front license plate, which had a dent on the driver's-side door. After the vehicle was later stopped by other Greenburgh police detectives, Det. DeVito observed

an unrestrained infant in the rear of the vehicle. He also observed jewelry, loose change, tools and other assorted items scattered throughout the vehicle. After transporting the infant to Greenburgh Police Headquarters, Det. DeVito catalogued and photographed the car's contents.

On that same date, Det. DeMillo was in uniform on a marked police motorcycle assigned to a motorcade/funeral detail for a resident of 501 Watch Hill Road, Greenburgh, NY. He was aware that, at the same time, other law enforcement officers were conducting an investigation in the area of 501 Watch Hill Road regarding a burglary pattern, which included prior burglaries of residences while the occupants' funerals took place. Det. DeMillo had been advised that a specific vehicle may have been associated with the burglaries and had seen a bulletin describing the vehicle as a silver Acura MDX which had body damage to the driver's side.

At 12:21 p.m., Det. DeMillo was on his motorcycle when he heard a radio transmission that the surveillance team had observed a silver Acura MDX with drivers-side door damage near the subject premises. The car had a vanity plate in front and a Connecticut license plate in the rear. He heard his dispatcher report that the rear Connecticut license plate was "not on file," which meant that the car was not registered (see Vehicle and Traffic Law §401[1]a). He left the funeral detail and stopped the Acura MDX on the southbound side of the Sprain Brook Parkway. Defendant was driving the vehicle and a small child was not properly restrained in the

back seat (see Vehicle and Traffic Law §1229-C[1]a). Although Defendant had a driver's license, she did not have a registration for the vehicle.

Defendant was transported to Greenburgh Police Headquarters. There, she validly waived her "Miranda rights" and consented, orally and in writing, to the search of the Acura MDX.

#### CONCLUSIONS OF LAW

##### **1. The Stop of Defendant's Vehicle was Based on Probable Cause to Believe a Traffic Violation had been Committed**

It is a fundamental tenet of Fourth Amendment jurisprudence that a search may only be made pursuant to a valid search warrant, except one which is based upon some recognized exception to the warrant requirement. As the Court stated in *People v Molnar*, 98 NY2d 328, 331 (2002), the Fourth Amendment provides that

"[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Courts have long recognized that the Fourth Amendment is not violated every time police enter a private premises without a warrant. Indeed, though warrantless entries into a home are "presumptively unreasonable" (*Payton v*

*New York*, 445 US 573, 586 [1980]; see also *Coolidge v New Hampshire*, 403 US 443, 474-475 [1971]), "[t]he touchstone of the Fourth Amendment is reasonableness"—not the warrant requirement (*United States v. Knights*, 534 US 112, 119 [2001]); *People v Adams*, 53 NY2d 1 (1981).

One such exception permitting a warrantless search is a search which follows the stop of a vehicle based on probable cause that a traffic infraction has been committed. *People v Hinshaw*, 35 NY3d 427 (2020). A search incident to a valid vehicle stop will be upheld even though the officers simultaneously sought to search the vehicle for other investigatory reasons. *People v Robinson*, 97 NY2d 341 (2001)

*Robinson* involved a search which was primarily conducted to further a specific investigation but was clearly based on probable cause that a traffic infraction had occurred. The court held that, even where there is a pretext for a vehicle stop, the stop is nevertheless valid where there is "probable cause to believe that the driver of an automobile has committed a traffic violation." In *People v Rowe*, 189 AD3d 894 (2<sup>nd</sup> Dept 2020), lv den 36 NY3d 1053 (2021), officers observed a traffic infraction (excessively tinted windows) and made a traffic stop. During questioning, they also learned that the driver's license had been suspended. The driver was thereafter arrested, the vehicle impounded, and a later inventory search uncovered evidence of credit card fraud. The search was held proper, since officers initially had probable cause

to stop the vehicle for the traffic infraction. See also *People v Golden*, 149 AD3d 777 (2<sup>nd</sup> Dept 2017), lv den 29 NY3d 1127 (2017) - -traffic infraction observed by police officers, giving officers probable cause to stop Defendant's vehicle. And, in *People v Bookman*, 131 AD3d 1258 (2<sup>nd</sup> Dept 2015), a faulty center brake light and items hanging from a rear-view mirror provided probable cause for a vehicle stop. That stop permitted an officer to observe narcotics evidence in the vehicle. The subsequent arrest of the occupants led to an inventory search which uncovered a loaded firearm. Since the officer had probable cause to stop the vehicle due to the observed traffic violation, the subsequent search was upheld. Compare *People v Hinshaw*, *supra* (information that vehicle had previously been impounded insufficient to establish probable cause for vehicle stop).

Here, Det. DeMillo was aware that the Acura MDX's Connecticut license plate number, when run, came back "not on file." He testified that, from his experience, a license plate number "not on file" means that the automobile is not registered. When Det. DeMillo observed the silver Acura MDX driven with the license plate listed as "not on file," he had probable cause to believe that Defendant was committing a traffic infraction (operating an unregistered motor vehicle - see Vehicle and Traffic Law §401[1]a)). Therefore, the stop of the vehicle was proper. The stop having been proper, the observations made thereafter were also proper.

## 2. Defendant Consented to a Search of the Vehicle

Following the vehicle stop by Detective DeMillo (for operation of an unregistered motor vehicle), Defendant went to Greenburgh Police Headquarters. There, she not only validly waived her "Miranda rights," but also consented, orally and in writing, to the search of the Acura MDX.

"One of the limited exceptions to the warrant requirement and, indeed, to the requirement of probable cause, is voluntary consent to search." *People v Gonzalez*, 39 NY2d 122, 127 (1976). The People bear a heavy burden to prove the voluntariness of Defendant's consent. *People v Kuhn*, 33 NY2d 203 (1973); *People v Whitehurst*, 25 NY 2d 389 (1969).

Here, Defendant's numerous verbal consents to search were spontaneous. The video recording of her statement to law enforcement officers in the Greenburgh Police Department Headquarters makes clear that there was no coercion nor official pressure. *People v Kuhn, supra; Schbeckloth v Bustamonte*, 412 US 218 (1973). The same holds true for her written consent to search the vehicle. Thus, the search was consensual and any evidence seized pursuant thereto was lawful.

Based on the foregoing, it is hereby

**ORDERED**, that Defendant's motion to suppress certain physical evidence is denied in all respects.

Dated: White Plains, New York  
October 5, 2021



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HON. DAVID S. ZUCKERMAN, A.J.S.C.

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