

People v Arias

2023 NY Slip Op 30549(U)

February 23, 2023

City Court of Peekskill, Westchester County

Docket Number: CR-2337-22

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-

Bench Trial
Verdict
CR-2337-22

MANUEL J. ARIAS,
Defendant.

-----X

REGINALD J. JOHNSON, J.

This is a verdict after a bench trial. Defendant was charged with Driving While Intoxicated in violation of Vehicle and Traffic Law (VTL) §1192.3, Unsafe Lane Change in violation of VTL §1128-(a), two counts of Improper or Unsafe Turn/Without signal in violation of VTL §1163-(a), Operating a Motor Vehicle While Using a Portable Electronic Device in violation of VTL §1225-(d), and Failed to Stop for a Stop Sign in violation of VTL §1172-(a). Defendant was represented by George W. Echevarria, Esq. The People were represented by ADA Amanda Cicero. Peekskill Police Officer Michael Nolte testified for the People. Manuel J. Arias, the defendant, testified, via a Spanish Interpreter.

I. Procedural History

On July 16, 2022, the defendant was arrested for DWI, Unsafe Lane Change, two counts of Improper or Unsafe Turn/Without signal, Operating a Motor Vehicle While Using a Portable Electronic Device, and Failed to Stop for a Stop Signal. On

July 18, 2022, the defendant was arraigned. The case was adjourned several times until December 12, 2022, when the defendant requested a suppression hearing (Ingle/Dunaway/Mapp/Huntley). The suppression hearing was held on January 20, 2023, and the Court denied the defendant's request to suppress the evidence. On January 23, 2023, the defendant requested a bench trial, and signed a jury waiver in open Court, whereupon the Court scheduled the bench trial for January 27, 2023. After the conclusion of the bench trial, the Court reserved a decision on the verdict until February 27, 2023.

II. Direct testimony of P.O. Michael Nolte

P.O. Nolte testified that he had been employed by the Peekskill PD since August 2018. He said he received DWI training at the Police Academy with the Peekskill PD in 2021, and that since 2021, he had been involved in approximately 100 DWI investigations and/or arrests. P.O. Nolte has been certified as a Drug Recognition Expert (DRE) since 2021. He also received a certification as an Emergency Medical Technician (EMT) in 2009. Prior to his employment with the Peekskill PD, P.O. Nolte had been employed by the Dutchess County Sheriff's from May 2013 to October 2014, where he received DWI training, which included training in administering Standardized Field Sobriety Tests (SFSTs). Prior to his employment with the Dutchess County Sheriff's Office, P.O. Nolte was employed by the Town of Wallkill Police Dept. from October 2014 to August 2018, where he

received his certification in Advanced Roadside Impaired Driving (ARID) training. Lastly, P.O. has been certified by the New York State Department of Health as a Certified Breath Test operator in 2013.¹

P.O. Nolte testified that on July 16, 2022 at approximately 9:25 p.m., he observed the defendant make a left turn from the right lane on Division Street to Central Ave without signaling, where he then proceeded to the intersection of Central Ave and Nelson Ave and made a right turn on Nelson Ave, and then he proceeded on Nelson Ave and made a left turn on John Street, and then proceeded to the intersection of John Street and Decatur Street, and made a left turn without coming to a complete stop at the stop sign at the corner of John Street, while talking on a cell phone.

P.O. Nolte stopped the defendant's vehicle on John Street. He testified that the defendant was the sole occupant in his vehicle. P.O. Nolte requested defendant's license, registration, and proof of insurance, which the defendant produced although he fumbled with his wallet before produced his registration. Upon further observation, P.O. Nolte noticed that the defendant had glassy, watery eyes, impaired

¹ P.O. Nolte did not produce a current Breath Analysis Operator Certification card, but he testified that he was currently certified after previously attending a 3-day course on how to operate the Datamaster equipment, which included live testing. P.O. Nolte testified that he operated the Datamaster equipment approx. 80 times prior to defendant's testing, during his employment with the City of Peekskill. The arresting officer may also administer the chemical test, and so long as he has been trained to administer the test and no unusual circumstance exist, the test results need not be corroborated (see *People v. Evers*, 68 N.Y.2d 658, 659 (1986)).

speech (mumbling), and an odor of alcohol emanated from the car. He asked the defendant to exit the vehicle and he noticed that the defendant struggled to open the car door, and that had an unsteady gait as he walked to the rear of his vehicle. Based on his observation of the defendant and his belief that he may be intoxicated, P.O. Nolte requested that the defendant submit to SFSTs.²

Prior to administering the SFSTs, P.O. Nolte asked the defendant if he had any medical issues, or if he had been drinking, or if he had any physical issues or if he had been taking insulin, and he responded in the negative to every question.

P.O. Nolte administered the Horizontal Gaze Nystagmus (HGN) test to defendant, which he failed. He then administered the Walk-and-Turn test to defendant, which he failed. Lastly, he administered the One-Leg Stand test to defendant, which also he failed. Based upon the defendant's performance on the SFSTs; impaired speech and motor coordination; glassy, watery eyes; and odor of alcohol emanating from the defendant, he concluded that the defendant was intoxicated and thereafter placed him under arrest for driving while intoxicated.

P.O. Nolte transported the defendant to the police station where he was processed, where his personal belongings inventoried, and where he was given Miranda and DWI refusal warnings (People's "2" in evid). P.O. Nolte asked the

² The Horizontal Gaze Nystagmus, Walk-and-Turn, and One-Leg Stand are the three (3) tests validated by the government sponsored studies entitled "DWI Detection and Standardized Field Sobriety Testing" manual (see SFST Manual, VIII-11).

defendant to provide a breath sample and he consented. P.O. Nolte testified that he observed the defendant for 20 minutes prior to the administration of the chemical test to ensure that he did not consume any alcohol during that time. He said he imputed the defendant's pedigree information into the Datamaster equipment prior to testing him. P.O. Nolte said that he instructed the defendant on two occasions to blow into a tube, but instead he inflated his checks with air and then sucked on the tube twice producing a "suck back error," which was ultimately deemed a refusal (People's "4" in evid). After each "suck back error," P.O. Nolte gave the defendant a Refusal Warning (People's "5" in evid.). Defendant was issued an appearance ticket and released.

P.O. Nolte's bodycam was in operation during the stop and during defendant's processing at the police station (People's "1" in evidence). The bodycam video was played during the direct and cross examinations of P.O. Nolte. The video showed the defendant's roadside stop; his interaction with P.O. Nolte; his performance on the SFSTs; and his arrest roadside. The video also indicated that the defendant was a native Spanish speaker with limited English proficiency. Notwithstanding said limited English proficiency, the defendant appeared to be able to understand and communicate with P.O. Nolte regarding a request to produce his driver's license, proof of insurance, and proof of registration; understanding the instructions for the SFSTs prior to performing same; responding to questions about where he was

coming from and his destination; answering questions about whether he was taking any medication or had any physical or medical issues that would prevent him from taking the SFSTs; understanding his Miranda and DWI refusal warnings; intelligently and knowingly consenting to take the chemical test; and apparently understanding the instructions regarding the administration of the chemical test. Of note, the defendant never requested the assistance of Spanish interpreter.

III. Cross Examination of P.O. Nolte

On cross examination, P.O. Nolte said that the defendant's native language was Spanish. He also stated that during one of the SFSTs, the defendant informed him that he did not understand his instructions, but P.O. Nolte said he repeated the instructions to defendant who appeared to then understand them. P.O. Nolte was asked if he believed that defendant understood him when he asked him if he was taking medication. P.O. Nolte said he believed the defendant did understand him. P.O. Nolte was then asked why he did not obtain the assistance of a Spanish interpreter for the defendant, and he responded that the defendant never requested an interpreter and that he thought defendant was able to adequately communicate with him in English. P.O. Nolte was asked if he thought the defendant understood his instructions to blow into the Datamaster tube, given his limited English proficiency, and he said he believed defendant did understand but was purposefully trying to evade the test. Lastly, P.O. Nolte was asked why a DWI refusal warning in

Spanish wasn't provided to the defendant, and he said that he believed that the defendant adequately understood the English language.

IV. Direct Testimony of Defendant

Defendant testified that he was born in Ecuador in 1982, and that he is self-employed doing landscaping and construction with his own company, Manuel Landscaping and Construction Corporation, that he established 4 years ago. He said that his native language is Spanish and that he has never taken classes in English. He testified that he was diagnosed with diabetes a year ago and that he has been taking high blood pressure medication four (4) months ago. Defendant said that he did not tell P.O. Nolte that he had diabetes or blood pressure medication because he did not ask him. Defendant stated that he only understood a little English on the date in question. Earlier in the day before the stop, the defendant said he was doing sidewalk work in White Plains until 4:00 p.m., then he did work on Harrison Ave in Peekskill, then went to play soccer in Yorktown for about ½ hour, after which he went to Divan Street in Peekskill, where he took a shower, brushed his teeth, and used Listerine, and then proceeded to Sabor Ecuatoriano Restaurant on Washington Street, Peekskill. After leaving the restaurant, the defendant was stopped by P.O. Nolte, arrested for driving while intoxicated, and issued tickets for other VTL violations.

Defendant testified that he did not have any difficulty exiting his vehicle, but just some difficulty finding the door handle because the car was small. Defendant said that P.O. Nolte instructed the defendant in English, but he did not understand him very much.

V. Cross Examination of Defendant

On cross examination, the defendant was asked if he was on medication, if he was a diabetic, or if he was taking insulin, and he responded in the negative. Defendant stated that he responded in the negative because he did not understand what P.O. Nolte was asking him. However, the defendant did state that he understood the instructions concerning the One Leg Stand test. Defendant stated that the car he was driving was owned by him but that he does not regularly drive the car.

VI. Closing Statements

During closing statements, the defendant argued that the video showed that he did not understand P.O. Nolte's instructions and questions, and that hand gestures and demonstrations do not satisfy due process. Defendant further argued that the video showed that he was struggling to understand English, and that P.O. Nolte should have known that defendant could not clearly understand him. Defendant argued that the Spanish version of the DWI warnings should have been provided to him. He contended that he was not intoxicated but tired. Defendant argued that

neither P.O. Nolte nor the defendant understood each other about questions pertaining to his wallet, where he was coming or where he was going. Lastly, defendant argued that P.O. Nolte made no effort to obtain an interpreter for the defendant, and that he had an obligation to do so.

The People argue that the stop and arrest were lawful, as shown in the body cam video. The People also argue that the defendant never requested an interpreter; that he did understand the questions and instructions from P.O. Nolte; and that he willfully refused to submit to a chemical test by sucking on the Datamaster tube instead of blowing into it, as shown in the video. Lastly, the People argued that based on the evidence presented at trial, it proved the defendant's guilt beyond a reasonable doubt on the charge driving while intoxicated.

VII. Discussion

In a criminal bench trial, the Court is no more required to state a factual basis for its verdict than a jury (see, *People v. Carter*, 63 N.Y.2d 530 [1984]; *People v. Nickel*, 14 A.D.3d 869 [3d Dept 2005]; *People v. Neff*, 287 A.D.2d 809 [3d Dept 2001]). “[T]he trial court, in a nonjury trial, is presumed, absent a showing of prejudice, to have considered only the competent evidence adduced at trial in reaching its verdict” (see, *People v. Walker*, 175 A.D.2d 146, 147 [2d Dept 1991]) (citations omitted); *People v. Majeed*, 204 A.D.2d 986 [4th Dept 1994]). Further, “issues of credibility, as well as the weight to be accorded the evidence presented,

are primarily questions to be determined by the trier of fact, who had the opportunity to hear and observe the witnesses (see, *People v. Carmody*, 213 A.D.2d 720 [2d Dept 1995]; *People v. Hodge*, 290 A.D.2d 582, 583-584 [3d Dept 2002]; *People v. Cambria*, 204 A.D.2d 167 [1st Dept 1994]; *People v. Blacky*, 203 A.D. 471 [2d Dept 1994]).

To prove a defendant guilty of driving while intoxicated, the People are required to prove: 1.) identification; 2.) operation; 3.) motor vehicle; 4.) roadway listed in VTL §1192(7); 5.) while (i.e., operation and intoxication must be simultaneous); and 6.) intoxicated by alcohol (*Handling the DWI Case in New York, Vol. 1*, by Peter Gerstenzang, Esq. 2022-2023 Edition, §11:17). A police officer has probable cause to arrest a person “when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgement and experience that it is reasonably likely that such offense was committed and that such person committed it” [CPL §70.10.(2)]. The “decision to stop a vehicle is reasonable where the police have probable cause to believe that a traffic infraction has occurred” (see, *People v. Robinson*, 97 N.Y.2d 341, 354 [2001]; *People v. Guthrie*, 25 N.Y.3d 130, 133 [2015]). Probable cause for driving while intoxicated arrest exists if the arresting officer can demonstrate reasonable grounds to believe the defendant had

been driving in violation of VTL §1192 (see, *People v. Kowalski*, 291 A.D.2d 669 [3d Dept 2002]; *People v. Poje*, 270 A.D.2d 649 [3d Dept 2000]).

Here, P.O. Nolte testified that he initially observed the defendant commit a traffic violation of VTL 1128A when he made a left turn from the right lane on South Division Street to Central Avenue. Based on this initial observation, P.O. Nolte had the legal authority to stop defendant's vehicle. And while following defendant's vehicle, he observed the defendant commit additional traffic violations. After stopping the defendant's vehicle, P.O. Nolte noticed that the defendant had slurred speech, glassy/watery eyes, impaired motor coordination, and an odor of alcohol emanated from him. P.O. Nolte noticed that the defendant had some difficulty finding the door handle and that he fumbled with his wallet to get his registration. He asked the defendant to exit his vehicle and requested that he submit to SFSTs. Defendant failed the HGN, Walk-and-Turn and One Leg Stand tests. Although the defendant was a native Spanish speaker, it was clear that the defendant understood what was being asked of him and how to conduct the SFSTs.

Because the defendant failed the SFSTs, P.O. Nolte had probable cause to arrest him (see, *People v. O'Riley*, 16 Misc.3d 775, 778, (Dist. Ct of New York, First Dist., Suffolk County [2007])). After the defendant was arrested and given Miranda and DWI Refusal Warnings, the video showed that the defendant inflated his cheeks

and sucked the Datamaster tube on two attempts causing a “suck back error.” P.O. Nolte deemed the second failed attempt a refusal and rightfully so.

VTL §1194(2)(a) states, in pertinent part,

Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of policer officer:

- (1) having reasonable grounds to believe such person to have been operating in violation of any subdivision of section eleven hundred ninety-two of this article and within two hours after such person has been placed under arrest for any such violation; or having reasonable grounds to believe such person to have been operating in violation of section eleven hundred ninety-two-a of this article and within two hours after the stop of such person for any such violation.

If a defendant orally consents to a chemical test, but then deliberately thwarts it, that behavior constitutes a refusal (see, *Matter of Van Sickle v. Melton*, 64 A.D.2d

864 [4th Dept 1978]). In *Van Sickle*, the defendant repeatedly pretended to blow into a breathalyzer, so the Court concluded that his conduct amounted to a refusal to take the test (see also, *People v. Sanchez*, 48 Misc.3d 765 [Crim. Ct. New York County 2015] (defendant only pretended to blow into machine)).

If a defendant is of limited English proficiency, the defendant should advise the arresting officer of the need for an interpreter, unless the limited English language proficiency is fundamentally profound (see, *People v. Niedzwiecki*, 127 Misc.2d 919, 921 [Crim. Ct. Queens County 1985]). In *Niedzwiecki*, the defendant requested a Polish interpreter but the police failed to provide the interpreter. The court stated “the police realized from the moment of his arrest that the defendant possessed a fundamental linguistic problem” (Id. at 921). The court held that the failure to provide the defendant with a Polish interpreter after his request for same, rendered his refusal invalid (Id.). In the case at bar, the defendant did not make a request for an interpreter to the police and he did not demonstrate a profoundly limited English proficiency.

Further, the Court is not persuaded that the defendant did not comprehend enough English to follow P.O. Nolte’s instructions to blow into the tube. The Court notes that the defendant pled guilty to a DWAI in 2013, so it is somewhat difficult to believe that the defendant was not familiar with the chemical testing process.

VIII. Verdict

Based on the testimony of P.O. Nolte, the testimony of the defendant, and a review of the evidence admitted at the bench trial, the Court finds the defendant guilty of driving while intoxicated in violation of VTL 1192(3); guilty of unsafe lane change in violation of VTL 1128(a); guilty of two (2) counts of improper/unsafe turn without signaling in violation of VTL 1163(a); passing a stop sign in violation of VTL 1172(a); and guilty of operating a motor vehicle while using a cell phone in violation of VTL 1225-d.

The Court will schedule sentencing for March 13, 2023, at 9:30 a.m.

Reginald J. Johnson, JCC

Dated: Peekskill, New York
February 23, 2023

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