SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER
Indictment No. 19-0879

KENNETH BLANCO,

Defendant.

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Minihan, J.,

An indictment has been filed against the defendant charging him with two counts of Driving while Intoxicated (Vehicle and Traffic Law Law §§ 1192[2], 1192[3][as a class E felonies]) and with the violation of Vehicle and Traffic Law § 1110(a). The allegations are that, on or about July 3, 2019 at approximately 10:56 p.m. in the vicinity of Mamaroneck Avenue and Gertrude Avenue in the Village of Mamaroneck, the defendant operated a motor vehicle while intoxicated by alcohol, with a blood alcohol level of .09, and that he made a left turn in violation of a posted sign prohibiting such.

The People filed timely notice of their intent to introduce an oral statement which they attribute to the defendant and which they allege were made at approximately10:35 p.m. on July 3, 2019 while on the roadside of Mamaroneck Avenue shortly after being stopped, in which he, in substance, stated that he had just consumed two beers at the Vista Mar restaurant and that he was "good" to drive.

Defendant's omnibus motion sought, inter alia, suppression of the noticed statement attributed to defendant, suppression of the results of the defendant's chemical test and suppression of the bottle of flavored vodka which was recovered in a backpack pursuant to what the People contend was a pre-impound inventory search of the rental car defendant was driving. By Decision and Order dated June 25, 2020, this court (Fufidio, J.) granted the omnibus motion to the extent of ordering pre-trial *Huntley, Mapp/Dunaway* and *Sandoval* hearings. On March 4, 2021 and March 5, 2021, combined *Huntley, Mapp/Dunaway* were held before this court. The *Sandoval* hearing was deferred until immediately prior to trial.

Pursuant to the combined *Huntley* and *Dunaway* hearings, I give full credence to the testimony of the People's witness, Officer Michael Valente of the Village of Mamaroneck Police Department, whose testimony I found to be candid, plausible and fully credible. The People's exhibits in evidence, without objection, consist of a DVD containing various recordings of the traffic stop and proceedings thereafter at the police department as well as a photograph of a bottle of flavored vodka. The defense called no witnesses and presented no evidence.

I make the following findings of fact and conclusions of law.

People v Kenneth Blanco
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FINDINGS of FACT

On July 3, 2019, Officer Michael Valente, a sixteen-year veteran of the Village of Mamaroneck Police Department was working 4:00 p.m. to midnight assigned to routine patrol. At approximately 10:30 p.m., while in uniform and in a marked patrol vehicle on Mamaroneck Avenue in the Village of Mamaroneck, Officer Valente observed a vehicle exiting off of I-95. He observed the vehicle make an illegal left turn at the bottom of the exit ramp, across the solid double yellow lines, to the southbound lane of Mamaroneck Avenue. A prominent sign at the bottom of the exit ramp prohibits left turns, requiring motorists to continue to the northbound lane from the exit that directly feeds into it.

Officer Valente activated his emergency lights and effected a vehicle and traffic stop of the gray Ford Fusion on Mamaroneck Avenue near its intersection with Gertrude Avenue. The evening was dry and traffic was light at that time. The patrol vehicle he was operating that evening was equipped with a dashboard camera that automatically engaged when the emergency lights were activated, as did the body microphone the officer was wearing (People's Exhibit 1). When he exited the patrol vehicle, Officer Valente approached the Ford Fusion on the passenger side and spoke with the driver, who was identified at the hearing as the defendant, Kenneth Blanco. In this initial portion of their encounter, the officer leaned into the open passenger side window to speak with the defendant from a distance of approximately three feet. On the video, which was entered into evidence without objection, the defendant politely apologized for turning left off of the exit, claimed not to have seen the sign and said that he did not know he could not legally make the turn. The officer testified that he detected the odor of an alcoholic beverage and that, at this point, the encounter shifted from a routine vehicle stop for a traffic infraction to a DWI investigation.

In response to his inquiry, the defendant, who was the sole occupant of the vehicle, produced his license, indicated that the vehicle was a rental car, and produced the rental agreement upon request. In speaking further to the defendant, the officer confirmed that the smell he detected was alcohol and he also observed that the defendant's eyes appeared glassy. He asked the defendant where he was coming from and where he was headed and the defendant responded that he was coming from the Bronx, was heading home to Connecticut and that he had stopped in Mamaroneck to go to Sal's Pizzaria to pick up food for his family. Officer Valente asked the defendant if he had been drinking that evening and the defendant replied, "No, I'm good." The officer then attempted to clarify, asking whether the defendant was denying having had anything to drink or was saying that he was "good" to drive. The defendant said, "No. I'm ok," and went on to deny having had anything to drink. The defendant was loquacious during the entire encounter with Officer Valente that evening. He explained that he had just moved to Stamford, that he had three daughters, and that he was returning to Connecticut after having gone to his daughter's 19th birthday dinner on City Island. He said that his family had asked him to stop at Sal's and bring them home pizza. Several times the officer redirected the conversation back to whether the defendant had been drinking at the dinner, pointing out that, despite the defendant's protestations to the contrary, he could smell alcohol in the car, asking "Nothing? Not

a sip? I'm smelling alcohol and I'm on the other side of the car so just be honest, man." Soon thereafter, the defendant conceded that he "had like two drinks." After further inquiry, the defendant told Officer Valente that "it was just beer," that he had consumed two Corona beers and that he was just trying to go home. Upon his admission to having consumed some alcohol that evening, the officer chided, "See? ... you were lying to me." "That's strike one. You lied to me. You weren't telling me the truth."

After running the defendant's license, the officer returned to the car, approaching the driver's side this time, and asked the defendant to again run through what he had told him so far about where he had been that evening and the defendant complied. The officer, who from this vantage point and with the additional conversation was able to confirm that the odor of alcohol was coming from the defendant inside the vehicle, then asked him where his interlock device was. The defendant responded, "Yeah. I have to fix that," and went on to describe the circumstances of his recent previous DWI prosecution. The officer stopped the garrulous defendant mid-sentence and told him that he had to make sure that he was "ok" to drive. The defendant, whom the officer characterized in his hearing testimony as cooperative, reiterated that he was good to drive and stepped out of the car to perform the field sobriety tests to demonstrate that he was in a condition to drive safely. As the defendant exited the vehicle, Officer Valente asked fellow Mamaroneck Police Officer Mark Ennis, who had responded in the meantime to assist, to turn off his emergency lights so that the flashing lights would not be distracting or affect the results of the gaze nystagmus field sobriety test.

Over the course of the next twenty minutes, the defendant performed each of the three standardized field sobriety tests that Officer Valente requested of him: the horizontal gaze nystagmus test, the one leg stand test, and the walk and turn test, all of which were captured (video and audio) on the officer's dashcam video and body microphone (People's Exhibit 1). Afterwards, the defendant submitted to a preliminary breath test which indicated an unrecorded but positive numerical result for the presence of alcohol, a result that exceeded his later results on the breathalyzer. Prior to the date of this incident, the officer had received training in administering all of these tests (he was, in fact, certified to administer standardized field sobriety tests, the preliminary breath test, and the data master breathalyzer). Additionally, the experienced officer had, by that time, completed a significant amount of training in DWI investigations, in detecting alcohol consumption in motorists and in determining levels of intoxication. By July of 2019, Officer Valente had made between 50 and 100 DWI arrests during the course of his career and had assisted in approximately twice as many DWI arrests made by other officers. Officer Valente, who explained and demonstrated to the defendant specifically how each test was to be performed prior to having the defendant submit to the test, concluded that the defendant failed each of the field sobriety tests: a nystagmus was observed, the defendant did not properly follow the walk and turn directions, he exhibited balance problems, he failed to walk in heel-to-toe fashion, he used his arms to balance, he dropped his foot to the ground before completion of the one leg stand and he failed to count in the manner he was instructed to. The decision to arrest the defendant for driving while intoxicated was made by the officer after the completion of the field

sobriety tests but prior to the preliminary breath test. The defendant was not advised of his *Miranda* rights at any point that evening.

At approximately 10:56 p.m., the defendant was arrested for driving while intoxicated and was transported to the Mamaroneck police station. The rental vehicle that he was driving was impounded at the scene. Prior to impound, Officer Mark Ennis, who had arrived prior to the defendant's arrest to assist Officer Valente, conducted an inventory search which resulted in the recovery of an open bottle of New Amsterdam pineapple vodka (three-quarters empty) in a black backpack in the back seat of the car (People's Exhibit 2). Officer Valente testified that an inventory search is conducted to remove, safeguard and account for valuables and personal property and also to uncover evidence of driving while intoxicated or other evidence.

Once at police headquarters, the defendant was handcuffed to a detention bench which Officer Valente characterized as a temporary holding area. There, the cooperative defendant waited during the twenty minute observation period, occasionally biting his nails while speaking amiably with the officer during the processing of his arrest. These events were also recorded (People's Exhibit 1). In his testimony, Officer Valente explained that the purpose of the observation period was to ensure that the subject of the chemical breath test did not regurgitate or ingest any food or beverages which might result in "mouth alcohol" affecting the results of the data master. During this period, the defendant occasionally put his hand to his mouth and appeared to be biting his fingernails.

After twenty minutes elapsed, the defendant was brought into a different room for the chemical test. This room was equipped with a camera that recorded the defendant's chemical test (People's Exhibit 1). Officer Valente testified that while the defendant was getting situated for the breath test, he used nearby cabinets to hold himself up. At 11:29 p.m., the defendant, who had not been given refusal warnings, submitted to a chemical test of his breath, the results of which indicated that the defendant had .09 per centum of alcohol in his blood.

CONCLUSIONS of LAW

At a *Dunaway/Huntley* hearing where the defendant challenges the legality of a seizure, together with statements which were allegedly obtained as a result, the People bear the initial burden of establishing the legality of the police conduct (*see People v Malinsky*, 15 NY2d 86 [1965]). Once the People have met their initial burden, the defendant must demonstrate the illegality of the police conduct by a fair preponderance of the credible evidence (*People v Berrios*, 28 NY2d 361 [1971]). As to statements, the People are charged with proving their voluntariness beyond a reasonable doubt (*People v Anderson*, 69 NY2d 651 [1986]; *People v Huntley*, 15 NY2d 72 [1965]).

Here, the court finds that the police lawfully stopped the vehicle that the defendant was driving. A traffic stop constitutes a limited seizure of the person of each of the vehicle's occupants which, to pass constitutional muster, must be justified at its inception (*see People v Banks*, 85 NY2d 558, 562 [1995]). An officer may lawfully stop a vehicle upon reasonable suspicion that there has been a violation of the Vehicle and Traffic Law (*see People v Guthrie*, 25 NY3d 130, 133 [2015]; *People v Robinson*, 97 NY2d 341 [2001]). Here, Officer Valente's observation of the defendant driver's left turn in violation of a posted sign prohibiting such provided the officer with a lawful basis to stop the vehicle (*see People v Robinson*, 97 NY2d 341 [2001]; *People v Wright*, 42 AD3d 942 [2d Dept 2007]; VTL § 1110[a]).

The court also finds that the police had probable cause to arrest defendant. Probable cause, or reasonable cause to arrest, while initially derived from case law has been defined by statute. CPL 70.10(2) provides that reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which collectively are of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment, and experience that it is reasonably likely that such an offense was committed and that the suspected person has committed it (CPL 70.10[2]). The Court of Appeals explains that the basis for a belief that there is probable cause for an arrest "must not only be reasonable, but it must appear to be at least more probable than not that a crime has taken place and that the one arrested is its perpetrator, for conduct equally compatible with guilt or innocence will not suffice" (*see People v Carrasquillo*, 54 NY2d 248, 254 [1981]). The determination as to whether a police officer had probable cause for an arrest should not be narrowly focused on any single factor, but rather on an evaluation of the totality of the circumstances, which takes into account "the realities of everyday life unfolding before a trained officer who has to confront, on a daily basis, similar incidents" (*see People v Wright*, 8 AD3d 304, 306-307 [2d Dept 2004]). The police officer, in making the decision to arrest, need not eliminate all possible innocent explanations for the incriminating factual predicate he encounters (*see People v Mercado*, 68 NY2d 874, 877 [1986]) and, in fact, may act with probable cause even if mistaken if he has acted reasonably under the circumstances and in good faith (*see People v Colon*, 60 NY2d 78, 82 [1983]).

As applied to drinking and driving offenses, the relevant inquiry is "whether, viewing the facts and circumstances as they appeared at the time of arrest, a reasonable person in the position of the officer could have concluded that the motorist had operated the vehicle while under the influence of intoxicating liquor" (*see People v Farrell*, 89 AD2d 987 [2d Dept 1982]). Here, Officer Valente, who stopped the vehicle seconds after seeing it make an illegal left hand turn, twice observed the odor of alcohol emanating from the passenger compartment of the vehicle in which the defendant driver was the sole occupant. He noted that the defendant's eyes were glassy and that he failed three field sobriety tests. This, coupled with the defendant's admission that he had recently consumed alcohol at the dinner he was driving home from, provided ample probable cause for arrest.

The court declines to suppress the noticed statements allegedly made by defendant at the roadside during the vehicle stop, finding that they did not require *Miranda* warnings. A defendant who has been temporarily detained pursuant to a routine traffic stop, including suspected violation of the Vehicle and Traffic Law's Driving While Intoxicated offenses, is not in custody for the purposes of *Miranda* (*see People v Parris*, 26 AD3d 393 [2d Dept 2006]; *People v Myers*, 1 AD3d 383 [2d Dept 2003]). A reasonable initial interrogation occurring in the course of such stop is merely investigatory and does not require administration of *Miranda* warnings (*see People v Mathis*, 136 AD2d 746 [2d Dept 1988]). Neither are *Miranda* warnings required before the administration of field sobriety tests (*see People v Hager*, 69 NY2d 141 [1987]). Here, since Officer Valente's temporary roadside detention of the defendant after stopping his vehicle for an observed traffic infraction was permissible and non-custodial, *Miranda* warnings were not required. Thus, the noticed statements attributed to defendant at the roadside during the vehicle stop are admissible; defendant's motion to suppress them is denied.

The defendant's motion to suppress the results of his chemical test is denied. In the absence of defendant's express refusal to submit to the breathalyzer test, Officer Valente was entitled to rely upon the implied consent provision of the Vehicle and Traffic Law to procure a breath sample from the defendant for the purposes of determining its blood alcohol content (Vehicle and Traffic Law § 1194[2][a][1]; *see People v Kates*, 53 NY2d 591, 595 [1981]; *People v Gonsalez,* 144 AD3d 841 [2d Dept 2016]). The credible testimony adduced at the hearing demonstrates that the test was administered in accordance with the statute in that Officer Valente had reasonable grounds to believe that the defendant had operated a motor vehicle in violation of Vehicle and Traffic Law § 1192 and the chemical test was administered within two hours of the defendant's arrest (Vehicle and Traffic Law § 1194[2][a][1]; *People v Marietta,* 61 AD3d 997, 998 [2d Dept 2009]).

"Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions," among them, inventory searches (*Katz v United States*, 389 US 347, 357 [1967]; *see Colorado v Bertine*, 479 US 367 [1987][the inventory search exception to the exclusionary rule may apply to the search of a container found within the impounded vehicle]; *see also People v Gonzalez*, 62 NY2d 103 [1984]). Where, as here, there has been a lawful arrest of a driver of a vehicle that is required to be impounded, the police may conduct an inventory search that is "designed to properly catalogue the contents of the item searched" and not "a ruse for a general rummaging in order to discover incriminating evidence" (*People v Johnson*, 1 NY3d 252, 256 [2003]). To guard against this danger, the search must be conducted pursuant to an established procedure which clearly limits the conduct of the officer conducting the search in order to assure that it is conducted consistently and reasonably (*People v Johnson*, 1 NY3d at 256, *citing People v Galak*, 80 NY2d 715, 719 [1993]). To guard against the conversion of a proper inventory search to an unreasonable warrantless one in which police officers are essentially rummaging around to discover incriminating evidence, "[t]he procedure must be standardized so as to 'limit the discretion of the officer in the field'" (*People v*

Johnson, 1 NY3d at 256, *quoting People v Galak*, 80 NY2d at 719). "While incriminating evidence may be a consequence of an inventory search, it should not be its purpose" (*People v Johnson*, 1 NY3d at 256). It is the People's burden to demonstrate the validity of an inventory search (*see People v Gomez*, 13 NY3d 6, 11 [2009]).

Here, while there was testimony as to the fact of the inventory search, it was provided by Officer Valente who did not observe the bottle of vodka while he was present at the scene, and who neither conducted the search nor witnessed it. There was no evidence adduced at the hearing with respect to formal or informal policy, protocol, or guidelines for inventory searches conducted by members of the Mamaroneck Police Department and there is nothing in the record to suggest that the discretion of law enforcement in conducting such searches is limited in any way. Although Officer Valente testified that inventory searches were performed to protect personal property and to defend from claims of loss or theft, he twice stated that in addition to this proper purpose, such searches were conducted as a deliberate effort to obtain evidence pertaining to driving while intoxicated (or any other evidence). Since there was insufficient evidence adduced at the suppression hearing to establish that the inventory search was conducted pursuant to policy and that the motivation of police in conducting this search was administrative caretaking rather than criminal investigation, this aspect of the defendant's motion to suppress is granted (*see People v Galak*, 80 NY2d at 718-719; *People v Solano*, 148 AD2d 761 [2d Dept 1989]).

This constitutes the opinion, decision and order of this Court. The parties are directed to appear in the Trial Assignment Part on Tuesday, March 30, 2021. This shall be a virtual appearance.

Dated: White Plains, New York
March 11, 2021

HON. ANNE E. MINIHAN, A.J.S.C.

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