

STATE OF NEW YORK
COUNTY OF ERIE

:
:

COUNTY COURT
PART 18

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Legacy No: [REDACTED]

[REDACTED]

**MEMORANDUM OF LAW IN SUPPORT OF SUPPRESSION OF THE TRAFFIC STOP
AND SUBSEQUENT ILLEGAL PROLONGED SEIZURE OF DEFENDANT**

By:

[REDACTED]

To:

Hon. [REDACTED]
Erie County Court
25 Delaware Avenue, [REDACTED]
Buffalo, New York 14202

[REDACTED]

Erie County District Attorney's Office
25 Delaware Avenue
Buffalo, New York 14202

FACTS

On August 8, 2020, the defendant, [REDACTED], was stopped by the Buffalo Police while he was operating a vehicle (4; numbers in parentheses refer to pages in the transcript of the hearing). The initial reason for the police pursuit of the vehicle was that Officer Jake Giarrano saw it traveling the wrong direction down a one-way street (5). Additionally, Officer Gerrano testified that the vehicle was also traveling at a high rate of speed, although he couldn't give a specific estimation as to the vehicle's speed (4, 13).

Officer Gerrano testified that after doing a three-point turn, he followed the defendant's vehicle for approximately 20 or 30 seconds (6). Officer Gerrano testified that after he activated his vehicle's overhead lights, that the defendant's vehicle came to a stop "[q]uickly" and that it "[p]ulled over normal" (18). He then got out of his vehicle and went up to talk to the driver of the stopped vehicle within approximately 10 seconds (19).

When he was at the driver's window, Officer Gerrano testified that he asked for a license, registration, and proof of insurance (19). The officer testified that he didn't recall there being any issues with those things and, in, fact, [REDACTED] was not charged with any license, registration, or insurance infractions in regard to this incident (24-25). Officer Gerrano also testified that, upon speaking with the driver and the three other occupants of the vehicle, that all occupants rolled down their windows and that "everybody complied" (20). Moreover, Officer Gerrano testified that he had not received any radio call about this vehicle, that none of its

occupants were suspected of committing any crime, and that he started following it for “just a vehicle and traffic infraction” (20).

At some point during the stop, Officer Gerrano testified that he called for another car (8). When asked on cross-examination at what point was it an investigation for a weapon, Officer Gerrano responded:

“I mean, it was a — it was a traffic stop. It’s very common in the City of Buffalo to conduct traffic stops and recover weapons. So at what point does the traffic stop change to an investigation, I’m not sure, but it’s kind of a continuation of the traffic stop itself” (23).

Officer Gerrano also testified that the entire stop lasted “hours” (23). He specifically testified that “the traffic stop’s made, occupants detained, weapons are recovered” (23). When asked on cross-examination if he could recall a timeframe from when the vehicle stop was made to the point in time when the weapon was recovered, Officer Gerrano said, “I can’t” (23).

Although there was testimony that the defendant’s vehicle drifted from the right side of the road to the left side in the vicinity of the intersection of Sherman and Genesee Streets, there was no testimony adduced at the hearing that any officers saw anything ejected from inside the vehicle (6, 18).

**THE PROLONGED SEIZURE OF DEFENDANT WAS NOT REASONABLY RELATED
IN SCOPE OR LENGTH TO THE CIRCUMSTANCES WHICH JUSTIFIED THE
INITIAL TRAFFIC STOP AND MUST BE SUPPRESSED**

A traffic stop constitutes a limited seizure of the person of each occupant (*People v May*, 81 N.Y.2d 725, 727). For a traffic stop to be constitutional, the officer's action in stopping the vehicle must be justified at its inception, and the seizure must be reasonably related in scope, including its length, to the circumstances which justified the detention in the first instance (*People v Banks*, 85 NY2d 558, 562 [1995]).

Here, the evidence at the suppression hearing establishes that [REDACTED] was initially detained for mere traffic infractions that were witnessed by Officer Gerrano. While the officer certainly had reasonable cause to briefly detain [REDACTED] for the infractions of driving the wrong way and/or speeding, there was no evidence adduced at the hearing which would have established reasonable cause that [REDACTED] had committed, was committing, or was about to commit a crime, which might have warranted any further of detention.

Indeed, Officer Gerrano testified that [REDACTED] and the occupants were not suspected of committing any crime. There was no radio call about the vehicle or its occupants. The vehicle stopped quickly and pulled over normally after Officer Gerrano activated his lights. And [REDACTED] and all occupants were fully cooperative during the stop. Moreover, during the brief pursuit of the vehicle, there was no testimony or other evidence that any officers saw any of the car's doors or windows opened, nor did anyone see anything ejected from the vehicle (18). Nor

was there any testimony that any officers asked [REDACTED] or any occupants any investigatory questions about the swerve, nor about anything possibly being thrown out of the vehicle.

Accordingly, the record is devoid of any evidence that would amount to sufficient reasonable cause that [REDACTED] had committed any crime which might have warranted a prolonged detention subsequent to an initial stop for mere traffic infractions.

It seems abundantly clear that Officer Gerrano, and/or other officers, were acting upon a “hunch” that something illicit (i.e. an illegal weapon or illegal drugs) might possibly have been abandoned by the occupant(s) of the vehicle at some point during the pursuit, and potentially in the area where it drifted or served. However, no specific testimony was elicited at the hearing as to why the officers may have suspected this.

In general, to detain an individual, the police must have reasonable suspicion that criminal activity is either occurring or imminent (*People v May*, 81 NY2d 725, 727 [1992]; *People v Sobotker*, 43 NY2d 559, 563-564 [1978]).

The Court of Appeals has held that for such a reasonable suspicion, “[t]he requisite knowledge must be more than subjective; it should have at least some demonstrable roots. Mere ‘hunch’ or ‘gut reaction’ will not do” (*Sobotker* at 564) (*see also People v May*, 52 AD3d 147 [1st Dept 2008], holding that a defendant’s protracted 40 minute detention at his vehicle was not based on reasonable suspicion, but rather was based purely upon the officer’s “professional hunch” where defendant did not behave suspiciously and minor discrepancies in the passenger’s

account of where they were traveling from ‘did not alone, as a matter of law, provide a basis for reasonable suspicion of criminality.’”

Here, the entire stop was even more protracted than the one in *May*, as it lasted “hours” according to Officer Gerrano’s own testimony (23).

Based on the foregoing, the evidence at the hearing did not establish any objective, demonstrable knowledge of the police that amounted to reasonable suspicion of criminal activity by the defendant. An hour(s) long seizure of the defendant, after he had already produced a valid license, registration, and proof of insurance to the officer, is not reasonably related in scope or length to the initial traffic infraction of going the wrong way on a one way street. Accordingly, the prolonged police detention and seizure of defendant in this case must be suppressed.

CONCLUSION

For all of the reasons set forth above, defendant [REDACTED] respectfully requests that this Court suppress the seizure of defendant, and all fruits obtained as a result of the illegal seizure.

Dated: [REDACTED]

[REDACTED]