

STATE OF NEW YORK :
COUNTY COURT :

COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

[REDACTED]

-v-

MEMORANDUM OF
LAW IN SUPPORT OF
SUPPRESSION

[REDACTED]

Defendant.

This Memorandum of Law is submitted in support of [REDACTED]
[REDACTED] motion to suppress the revolver and alleged marijuana unlawfully
seized during a traffic stop on December 21, 2019, as well as any statements
made to law enforcement thereafter. Said traffic stop was without probable
cause and any alleged "good faith" mistake in the law made by officers was
not objectively reasonable.

To: Hon. [REDACTED]
[REDACTED] Esq., ADA

EC DISTRICT ATTORNEY
AUG 12 2021 AM 10:53

STATEMENT OF FACTS

On December 21, 2019, Officer Briggs, a Buffalo Police patrol officer, noticed a car running on the east side of [REDACTED] (see June 9, 2021 Hearing Transcript [TT] pages [pgs.] 13, 32). The court held a hearing to determine whether probable cause for the stop and subsequent search of the vehicle existed, and to rule on the admissibility of the statements made by [REDACTED] (June 9, 2021, TT: pg. 30). The hearing was commenced on June 9, 2021, and concluded on June 23, 2021, at which time the court reserved its ruling and granted the request of counsel to submit memoranda of law. The court heard testimony from Officer Briggs, Lieutenant Jonathan Pietrzak, [REDACTED], and the owner of the car, [REDACTED].

The testimony of the police officers demonstrated that the car was in front of a residential building on [REDACTED] at or around number [REDACTED] (June 9, 2021, TT: pgs. 32, 35, 44-45). Officer Briggs observed three people in the car at the time he first noticed the car. (June 9, 2021, TT: pg. 14). Officer Briggs circled around the block and came back. This took him “a few minutes”. (June 9, 2021, TT: pg. 14). When Officer Briggs had circled back, “a few minutes” later, he observed four people in the car and the car was still running. (June 9, 2021, TT: pgs. 15, 32, 38). Officer Briggs

admitted that the car was picking up a passenger and was standing on the far edge of the road. (June 9, 2021, TT: pgs. 32-33, 35). Officer Briggs specifically stated that the only reason he stopped the car was because he thought it was illegally parked. (June 9, 2021, TT: pg. 33-34). It was clear from all testimony that there are no posted signs on the east side of Suffolk Street in regard to parking. (June 9, 2021, TT: pgs. 11, 33, 46; June 23, 2021, TT: pg. 10, 12-13). Officer Briggs did not recall seeing any other traffic. (June 9, 2021, TT: pg. 37). Officer Briggs described the location as a “high crime area”. June 9, 2021, TT: pg. 17). The entire stop and search was captured on body cam video, which is in evidence for the Court’s review.

DISCUSSION

OFFICER BRIGGS DID NOT HAVE PROBABLE CAUSE TO STOP A CAR PICKING UP A PASSENGER NEAR [REDACTED]

The Court can and should infer from the testimony that the alleged illegal parking was nothing more than a pretext to question and search 4 young black males in the early morning hours in a “high crime area”.

Pretextual stops, of course, are okay in New York State so long as the police officer has probable cause to believe the driver has committed a traffic

offense (see People v. Robinson, 122 Ad3d 1447), or that the officer has a reasonable suspicion that the driver or passenger have committed, are committing or are about to commit a crime (see People v. Spencer, 84 NY2d 749), or that the stop is carried out in accordance with routine, non-pretextual traffic inspections intended to enforce traffic regulations (see People v. Scott, 63 NY2d 518).

As stated above, the **only** reason given for the stop of this car was a belief that it was illegally parked. Yet, the undisputed testimony from all of the witnesses was that the “No Parking” sign was on the west side of the street and that the subject vehicle was standing, close to the curb, on the east side of the street. This is confirmed by the body cam video. Furthermore, the testimony was clear and undisputed that the car was standing, not parking. The engine was running. This is also confirmed by the body cam video. An additional occupant had actually entered the vehicle. Even if parking was prohibited on the east side of the street (it was not), standing was not prohibited (Buffalo City Ordinance 479.15 (23-34) has specific streets listed as no parking streets, but the City Ordinance is silent as to the picking up and dropping off of passengers, so the court must look to VTL § 1200 (c) - which states that where parking is prohibited, one may stop or stand

temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers). Regardless, parking was not prohibited on the east side of the street.

The District Attorney may argue that the officer simply made a “good faith” mistake in believing that the vehicle was illegally parked, and that the search should be upheld. However, the law is no longer concerned with “good faith” under such circumstances. The issue now is whether the mistaken belief was objectively reasonable. In People v Guthrie, 25 NY 3d 130, 132 (2015), the New York Court of Appeals partially abrogated the mistake of law doctrine, holding that as long as "the officer's mistake about the law is reasonable, the stop is constitutional." In so holding, they reasoned that "the relevant question before us is not whether the officer acted in good faith, but whether his belief that a traffic violation had occurred was objectively reasonable. (People v Guthrie, 25 NY 3d at 132). In evaluating police conduct, the Court “must determine whether the action taken was justified in its inception and at every subsequent stage of the encounter”. (People v Witt, 129 AD 3d 1449, 1450 [4th Dept 2015]).

Pursuant to VTL § 1683 (a) (8): No ordinance, order, rule or regulation made by any local authority under the powers conferred by this title shall be effective until signs or markings giving notice

thereof are posted, except under such conditions as may be authorized in writing by the department of transportation or as otherwise provided in subsection (b) of this section, if the effect of such order, ordinance, rule or regulation is to... prohibit, restrict or limit the stopping, standing or parking of vehicles.

A "no parking anytime" sign on the opposite side of the street does not prohibit parking. The attempt to portray the street as busy where no one ever parks because there is not enough room does not change this. As witness [REDACTED] observed, and as anyone who works or lives in Buffalo knows, there are plenty of streets in Buffalo with far less room where parking is also legal. (June 23, 2021, TT: pgs. 16-17). Moreover, as explained in witness [REDACTED] testimony, residents of the [REDACTED] - near where the vehicle was standing - have no reason to park on the street because there is a parking lot behind the building. A picture of this is in evidence. (June 23, 2021, TT: pgs 14-15). And in any event, as stated above, Officer Briggs testified that he observed no other traffic at the time that he noticed the standing vehicle. There was no dangerous

situation. Therefore, Officer Briggs did not have an objective or credible reason to believe the car was illegally parked.

Sloppy police work or ignorance of what the VTL or City of Buffalo Parking Ordinances deem lawful does not make an alleged mistake of law reasonably objective. (People v Guthrie, 25 NY 3d at 134-135). The more credible inference, from Officer Briggs' own testimony, is that the specific address where the car was picking up its passenger was in a 'high crime area' and the officers needed a pretext to approach the car.

**██████████ HAS STANDING TO REQUEST SUPPRESSION
AS A PASSENGER OF THE CAR.**

A passenger in a stopped vehicle, has standing to contest the stop of the vehicle and therefore to challenge any evidence seized as the fruit of the unlawful stop. (People v Nicodemus, 247 AD 2d 833, 836 [4th Dept 1998]). Here, the testimony of Officer Briggs made it clear that ██████████ was a passenger in the car he stopped. (June 9, 2021, TT: pg. 21). Further, ██████████ had a possessory interest in, dominion and control over and the right to exclude others from the car as established by the testimony of ██████████ (People v Banks, 85

NY 2d 558, 561–62 [1995]). (see June 23, 2021, TT: pg. 20-21, 23).

No rational view of the evidence at the suppression hearing can conclude that the search and fruits of that search were acquired by means sufficiently distinguishable from the taint of illegal detention, and the revolver, marijuana and statements must be suppressed.

(People v Banks, 85 NY 2d 558, 563 [1995]).

CONCLUSION.

Whether the court views the matter as a stop of a standing car or approach of a parked car, the activity of law enforcement was not objectively reasonable. Both VTL § 1200 and City Ordinance § 479.15 are clear that picking up a passenger in a residential area is legal even in the presence of a no parking sign. The undisputed testimony of Officer Briggs made it clear that the running car was picking up a passenger. Officer Briggs had no objective reason or reasonable suspicion or credible reason to mistake that the car was illegally parked. There is no reading of the VTL or City Ordinance that would allow the court to find a reasonable mistake of law under these facts. [REDACTED] a passenger in that car, and person who had a

possessory interest in the car requests that the revolver, marijuana and statements attributed to him be suppressed and the indictment be dismissed based on that suppression.

Dated: August 11, 2021
Buffalo, New York

