

STATE OF NEW YORK  
COUNTY COURT                      COUNTY OF MONROE

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THE PEOPLE OF THE STATE OF NEW YORK  
v.

Indict. No. 2017/0215

DARREN BLOCKER,  
Defendant.

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**APPEARANCES:**

**For the People:**            SANDRA DOORLEY, ESQ.  
   Monroe County District Attorney  
   DARREN PILATO, Esq., of Counsel  
   47 S. Fitzhugh Street, Suite 832  
   Rochester, NY 14614

**For the Defendant :** THOMAS CORLETTA  
   16 W. Main St. Ste. 240  
   Rochester, New York 14614

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**DECISION AND ORDER**

VINCENT M. DINOLFO, J.

Defendant is charged with Driving While Intoxicated in violation of VTL§ 1192(3) Aggravated Unlicensed Operation of a Motor Vehicle in violation of Vehicle Traffic Law §511.3(a)(ii), and Driving While Vehicle Not Equipped with an Ignition Interlock Device in violation of VTL § 1198(9)(d). Defendant moved for a Probable Cause/Huntley/ Refusal Hearing which was conducted on August 28, 2017. The only witness called was Officer Albert Weech (“Weech”). The following constitutes the Court’s Findings of Fact and Conclusions of Law based upon what has been determined to be credible testimony and evidence.

**FINDINGS OF FACT**

On the morning of the incident Weech was assigned to a Rochester Police Department

Stop DWI detail. He recited to the Court the extensive training that he acquired throughout his career. He has advanced training with respect to all aspects of DWI law enforcement, including over one hundred hours of field certification. He further testified that he personally had been involved with more than two thousand DWI arrests and investigations prior to the evening in question.

On November 26, 2016, at approximately 1:10 am Weech was on duty, driving a marked police vehicle and situated “in the front entrance at the firehouse on Monroe Avenue just prior to the intersection of Alexander Street.” While there, he observed a vehicle going westbound on Monroe Ave. “coming up to the intersection of Alexander Street.” The vehicle had a green light and came to a complete stop in the center lane. That lane is designated for traffic to continue westbound. Weech stated that there “was no vehicles going eastbound in the other direction, but one vehicle did come up to the intersection and had to go around the stopped vehicle to continue westbound.” He further testified that nothing obstructed the “stopped” vehicle from executing a turn.

The subject vehicle had moved a little to the left. Weech stated ,” it was kind of halfway in the left turn lane and halfway in the center lane that it stopped in.” The operator completed the left turn after a five to seven second pause. Nothing obstructed the vehicle from making that left turn. Weech then initiated a stop of the vehicle.

Weech asked the driver for his license and the driver attempted to find it. Weech also observed what he believed to be a bag of marijuana in the back seat during this process. The driver was able to produce an identification card, not a driver’s license. The identification was for Darren Blocker. Weech identified that driver as the Defendant.

While this process was taking place, Weech noticed that Defendant had a very strong odor of an alcoholic beverage on his breath. Further, his eyes appeared bloodshot, watery and glassy. Defendant's speech was slurred and he mumbled to the extent that Weech could not understand him at times. At first he would not tell Weech where he had come from, but eventually he said that he and his two passengers had come from Burger King. Weech had Defendant step out of his car at that point. He testified that Defendant "kinda" grabbed on to the window as he did this and had to lean against his car for balance on two occasions. The area was well lit. Defendant refused to take any field sobriety tests. Defendant was not handcuffed at this time. Weech made threats or promises in order to induce Defendant to have a conversation with him. No coercion was exercise upon Defendant. Defendant did not ask for the services of an attorney, nor did he state that he wished to remain silent. Following this interaction, Weech concluded that, based upon years of experiences and thousands of encounters, Defendant was intoxicated and he arrested him for DWI.

Weech took Defendant back to the Special Operations Division Office at 261 Child Street. While there, at approximately 1:18am, he asked Defendant if he would submit to a chemical test and he refused. He did advise Defendant of his "refusal warning." He repeated these warnings a second time at approximate 1:35am, and Defendant refused to take the test once again. Finally, the warnings were read again and Defendant once more refused to submit to a chemical test at 1:45 am. In all instances, Defendant stated that he understood the refusal warnings.

Weech was then cross-examined. He repeated that there was no traffic coming towards Defendant's vehicle as it waited to take the left turn; there was no traffic in front of Defendant's



car and other than the one vehicle which came up behind him and drove around, there was no other traffic. Weech also testified that there was no traffic on Pearl Street as well. He reiterated that although Defendant moved his vehicle over towards the left, Weech did not ticket him for that behavior. Later in the cross-examination, Weech affirmed that the ticket issued related to the behavior with respect to the intersection itself; a violation of VTL §1175. Weech stated, “I pulled him over for obstructing the traffic at the intersection.” Under a series of questions, it was made abundantly clear that Defendant was not pulled over for any other reason. Weech did not know that Defendant did not have a valid license when he initiated this stop.

#### CONCLUSIONS OF LAW

In case such as the one at bar, any analysis must begin with the legality of the traffic stop. In that regard, It is well settled that a police officer can stop a motorist if he or she observes a motorist commit a traffic infraction in his or her presence (*see, People v. Robinson*, 97 NY2d 341[2001]; *People v. Rice*, 44 AD3d 247 [1<sup>st</sup> Dept. 2007]). The police officer who testifies at a suppression hearing must provide some articulable basis for his or her approach of the vehicle in so much as there is a reasonable suspicion that a traffic violation has been committed or is in the process of being committed (*People v. Jones*, 63 A.D.3d 1643, 1644 [4<sup>th</sup> Dept. 2009]; *see also, People v. Rose*, 67 A.D.3d 1447 [4<sup>th</sup> Dept. 2009]).

Here, one must look at VTL§1175 as the basis of the stop since Weech made it abundantly clear that it was the sole basis upon which he initiated the stop. The statute reads in its entirety:

When vehicular traffic is stopped on the opposite side of an intersection, no person shall drive a vehicle into such intersection, except when making a turn unless there is adequate space on the

opposite side of the intersection to accommodate the vehicle he is driving notwithstanding the indication of any traffic control signal which would permit him to proceed.

The testimony adduced at the Hearing established that there was no traffic whatsoever from the “opposite side of the intersection.” Therefore, the Court must conclude that Defendant was stopped solely on the perception that he violated VTL§ 1175, which constituted a stop predicated upon a mistake of law.

Up until recently, it was well established that a mistake of law, such as the one in the present case, resulted in suppression. The Court of Appeals loosened that bright line directive in People v. Estrella, 10 NY3d 945(2010), which held that a mistake made in good faith, and that if reasonable, would not result in suppression. In Estrella, a vehicle bearing Georgia plates was stopped because of tinted windows which exceeded the legal limit in New York State. However, as the tint was legal in the state of Georgia, the Court of Appeals held that it was not expected that the officer involved know Georgia law and the contraband seized after the stop was not suppressed.

That line of thinking was further analyzed in People v. Guthrie, 25 NY3d 130 (2015). The Court of Appeals held that an objectively reasonable mistake of law can provide the basis for a traffic stop. The Court continued that to hold that an objectively reasonable traffic stop which resulted in suppression, would not serve as a deterrent to police. However, the necessity of employing this “objectively reasonable” standard is to ensure that police do not engage in a “sloppy study of the law.” ( Guthrie, supra,138-139) ,citing and quoting Heien v. North Carolina, [ 135 S. Ct. 530] 2014). In Guthrie, the officer stopped a car for failing to stop at a stop sign. It was later found that the stop sign had not been registered under the requirements of

Newark Village Code§140-46. In sum and substance, the Court of Appeals found that the officer had made a reasonable mistake for presuming that the sign had been registered upon placement.

So here we must determine if it was reasonable for the officer not to know the traffic law he relied upon with respect to obstructing traffic at an intersection. The officer involved is assigned to a special unit which regulates vehicular traffic. He has had literally hundreds of hour of field training and thousands of hours of active duty enforcing the Vehicle and Traffic Laws. He was extensively trained and assigned to a special traffic enforcement unit.

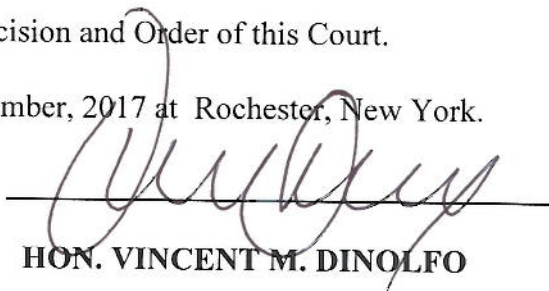
The operative language in VTL§ 1175 requires that traffic must be **stopped on the opposite side of the intersection**. There was no traffic on the opposite side of the intersection when the conduct precipitating the stop took place. It is not reasonable under the circumstances of this particular case to hold that the officer's mistake of law was reasonable or could be seen as a rational misunderstanding of the application of a statute.

Therefore, this mistake of law cannot be viewed as reasonable under the existing standard and the motion to suppress all evidence obtained after the stop is granted. Further, in light of all the foregoing, the other issues raised need not be addressed.

As the result of the suppression of all evidence, this Indictment is dismissed.

The above constitutes the Decision and Order of this Court.

Dated this 19<sup>th</sup> day of September, 2017 at Rochester, New York.



**HON. VINCENT M. DINOLFO**

**MONROE COUNTY COURT JUDGE**