

State of Connecticut v. Corey Gamache

MV070212979S

**SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF WINDHAM,
GEOGRAPHICAL AREA 11 AT DANIELSON**

2007 Conn. Super. LEXIS 3392

December 19, 2007, Decided

December 19, 2007, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: [*1] Harry E. Calmar, J.

OPINION BY: Harry E. Calmar

OPINION

MEMORANDUM OF DECISION RE MOTION TO SUPPRESS

On a clear, cold January night, the defendant was arrested incident to a traffic stop for operating a motor vehicle under the influence of alcohol in violation of *General Statutes §14-227a*. On May 31, 2007, the defendant, Corey Gamache, filed a motion to suppress the evidence of alcohol consumption and intoxication. The defendant's motion is based on the claim that Officer Solak of the Willimantic Police Department, who stopped the defendant's motor vehicle at midnight on January 24, 2007, had no reasonable and articulable suspicion to do so. Specifically, the defendant claims that the stop of the motor vehicle because a cluster of air freshener ornaments hung from the rearview mirror was illegal. A hearing on this motion was held on July 20, 2007. Counsel for the state and defense submitted memoranda of law on August 10, 2007, and reply briefs an August 14, 2007, and September 10, 2007.

The court makes the following factual findings:

The arresting officer, Matthew Solak, is a two-year veteran of the Willimantic Police Department. On January 24, 2007, at approximately midnight, while on routine patrol, he pulled [*2] up within five feet of the defendant's vehicle, which was stopped at the intersection of Union and lower Main Street. As soon as officer Solak

drove up behind the defendant's vehicle, he noticed "a large cluster of air freshener ornaments hanging from the rearview mirror," "three and a half to four inches tall and maybe an inch and a half or two inches wide" obstructing "the peripheral vision, especially" of the operator in violation of *General Statutes §14-99f(c)*. Officer Solak observed the vehicle turn east and followed it for approximately one-half mile on lower Main Street. After the defendant turned left into the parking lot of Tony's Pub, Officer Solak initiated a traffic stop. Officer Solak testified that there was no indicia of erratic operation, nothing about the defendant's driving behavior that suggested his vision was compromised and, with the exception of the cluster of air fresheners hanging from rearview mirror, no other articulable suspicion of criminal activity. The defendant was directed to provide his driver's license, registration and insurance. The officer immediately noticed a very strong odor of alcohol and observed that the defendant's eyes were glassy and bloodshot. [*3] After the defendant failed three field sobriety tests, the defendant was placed under arrest. A subsequent search of the motor vehicle located an open bottle of Yukon Jack liquor, two-thirds to one-half full on the driver's seat. Officer Solak initiated small talk with the defendant and asked if he had ever been arrested for driving while intoxicated before. The defendant was talkative, mentioned the names of officers he knew in the department and asked if Officer Solak would give him a break, perhaps a warning for the incident.

I. LAWFULNESS OF THE TRAFFIC STOP

"An investigatory stop is authorized if the police officer had a reasonable and articulable suspicion that a person has committed or is about to commit a crime." (Internal quotation marks omitted.) *State v. Dalzell*, 96 Conn.App. 515, 524, 901 A.2d 706, rev'd on other grounds, 282 Conn. 709, 924 A.2d 809 (2007), quoting *State v. Bolanos*, 58 Conn.App. 365, 368, 753 A.2d 943 (2000). "When a reasonable, articulable suspicion exists, the detaining officer may conduct an investigative stop of the

suspect in order to confirm or dispel his suspicions." (Internal quotation marks omitted.) *Id.*, quoting *State v. Wilkins*, 240 Conn. 489, 495, 692 A.2d 1233 (1997). [*4] "A police officer has the right to stop a motor vehicle operating on a Connecticut highway even if the reason for the stop is only an infraction under our traffic laws." (Internal quotation marks omitted.) *Id.*, quoting *State v. Dukes*, 209 Conn. 98, 122, 547 A.2d 10 (1988). Under *General Statutes §14-99f(c)*, attaching or affixing an article in a motor vehicle "in such a manner or location as to interfere with the operator's unobstructed view of the highway or to distract the attention of the operator" is an infraction that is clearly prohibited under Connecticut law.

The constitutional reasonableness of a traffic stop does not depend on the officer's actual motive in conducting the stop. *Whren v. United States*, 517 U.S. 806, 812-13, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). It is irrelevant whether the officer may have had other subjective motives for stopping the vehicle. *State v. Parker*, 84 Conn.App. 739, 744-45, 856 A.2d 428 (2004), cert. denied, 272 Conn. 912, 866 A.2d 1285 (2005).¹

1 Reasonable suspicion may rely on information less reliable than that required to show probable cause and it need not be correct. *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

The [*5] defendant argues that the state has not met its burden of proof of a reasonable, objective and particularized suspicion of an infraction where the officer stopped the vehicle with the belief that the mere presence of an air freshener(s) attached to the rearview mirror constituted an infraction. The defendant argues that the officer must reasonably believe that the air fresheners actually obstructed the defendant's vision through the windshield.

The state argues it is not permissible to alter the unobstructed state of the windshield by hanging any article that is not specifically authorized in the statutory scheme, meaning anything hung from the rearview mirror necessarily obstructs and/or distracts. The defendant counters that if the statute is construed as urged by the state, the hanging of anything from the rearview mirror is a per se violation, no operator will be able to lawfully use his vehicle in the manner for which it was designed and intended and the fourth amendment protection of operators' vehicles against being pulled over at the whim of the police will be effectively eliminated.

Many motorists in the United States drive with objects hanging from the rearview mirrors of their [*6] vehicles.² In the hierarchy of criminal conduct, the dangling air freshener may be at the bottom of the list, but as

Judge Wetzel observed in *Commonwealth v. Penn*, 61 VA. Cir. 25 (Va. Cir. Ct. 2003): "The variety and the frequency with which objects are suspended from rearview mirrors may be a reflection of the egocentricity of the driver and of the public's general ignorance of the statutory prohibition, but that does not excuse the conduct."

2 The reported cases reflect the wide variety of such objects. *United States v. Barragan*, 379 F.3d 524 (8th Cir. 2004) (air freshener); *United States v. Santiago*, 310 F.3d 336 (5th Cir. 2002) (golf ball-sized spherical crystals); *United States v. King*, 244 F.3d 736 (9th Cir. 2001) (parking placard); *Moore v. Winer*, 190 F.Supp.2d 804 (D.Md. 2002) (medic alert card); *Duffey v. State*, 741 So.2d 1192 (Fla. 4th DCA 1999) (dog tags); *In re Jose Z.*, 116 Cal.App.4th 953, 10 Cal.Rptr.3d 842 (2004) (Mardi Gras-type beads); *People v. Paxton*, 255 Cal.App.2d 62, 62 Cal.Rptr. 770 (1967), overruled on other grounds by *People v. Tribble*, 4 Cal. 3d 826, 484 P.2d 589, 94 Cal.Rptr. 613 (1974) (St. Christopher medal); *Thompson v. State*, 399 A.2d 194 (Del. 1979) (graduation [*7] tassel); *People v. Alvarez*, 243 Ill.App.3d 933, 613 N.E.2d 290, 184 Ill. Dec. 263 (1993) (cross hanging on a chain); *People v. Mendoza*, 234 Ill.App.3d 826, 599 N.E.2d 1375, 175 Ill. Dec. 361 (1992) (fuzzy dice); *Commonwealth v. Murray*, 27 Mass.App.Ct. 872, 545 N.E.2d 858 (1989) (garter belt); *De La Beckwith v. State*, 707 So.2d 547 (Miss. 1997) (Masonic emblem); *State v. Harris*, 839 S.W.2d 54 (Tenn. 1992) (handcuffs).

A majority of states have enacted statutes that make driving a vehicle with an object suspended from the rearview mirror a traffic infraction. See, e.g., *Mich. Comp. Laws §257.709(1)(c)* (2004); *Minn. Stat. §169.71(1)(a)(2)* (2004); *Neb. Rev. Stat. §60-6,256* (2004); *N.Y. Veh. & Traf. Law §375(30)* (McKinney 2004); *75 Pa. Cons. Stat. §4524(c)* (2004); *S.D. Codified Laws §32-15-6* (Michie 2004); *Va. Code Ann. §46.2-1054* (Michie 2004). The Illinois statute is a typical example of these laws. It provides: "No person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield, rear window, side wings or side windows immediately adjacent to each side of the driver which materially obstructs the driver's view." (Emphasis added.) 625 Ill. Comp. Stat. 5/12-503(c) (2004).

Connecticut General Statutes §14-99f(c) [*8] provides: "No article, device, sticker or ornament shall be attached or affixed to or hung on or in any motor vehicle in such a manner or location as to interfere with the operator's unobstructed view of the highway or to distract the attention of the operator." Notably, §14-99f(c) does not require a material obstruction. Indeed, the statute in

question does not require that the view of the operator be obstructed; rather, it requires that the view remain unobstructed. Uniquely, the Connecticut statute also prescribes items that "distract," as well as objects that alter the unobstructed view. *General Statutes §14-99f(c)*. In Connecticut, therefore, it is a violation of the statute if the object is hung in such a manner as to either: 1.) interfere with the unobstructed view of the operator; or 2.) distract the operator.

The court is not required to adopt the "per se" position of the state or conclude that the rearview mirror was designed and intended to be used as a fixture for hanging objects.³ In this case, the officer observed an opaque cluster of objects, large enough to observe from his own patrol car as he followed the defendant, hanging in the operator's field of vision. While [*9] Officer Solak testified that the air freshener did not obstruct the driver's view to the front or rear of the vehicle, he could reasonably conclude that the operator's peripheral vision in the right-hand direction was obstructed. These circumstances provided Officer Solak with, at the very least, reasonable suspicion sufficient to briefly detain the defendant and investigate the suspected violation.

3 Because there are so many vehicles in the county with hanging ornaments, it may well be that officers are free to stop whomever they choose. The same might be said of vehicles traveling sixty-six miles per hour or greater on Interstate 395.

Applying the objective standard to these circumstances, there was a reasonable and articulable suspicion that a traffic violation occurred and that the operator was violating *General Statutes §14-99f(c)*. The initial investigatory stop, as a result, was justified.

II. SEIZURE: The seizure of the open container of alcohol was justified as a search incident to the arrest.

The seizure of the open container was justified because it was found on the operator's seat of the vehicle after the defendant's arrest. *New York v. Belton*, 453 U.S. 454, 460, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981); [*10] *State v. Delossantos*, 211 Conn. 258, 263-66, 559 A.2d 164, cert. denied, 493 U.S. 866, 110 S.Ct. 188, 107 L.Ed.2d 142 (1989); *State v. Quinones*, 21 Conn.App. 506, 510, 574 A.2d 1308, cert. denied, 215 Conn. 816, 576 A.2d 546 (1990).

III. STATEMENTS

The state seeks to use the statements of the defendant made after his arrest employing Officer Solak to grant him leniency.⁴

4 The state agrees that the defendant's statement that he had previously been arrested for driving while intoxicated is not admissible.

These statements were not in response to any custodial interrogation and are admissible even though the defendant was not advised of his Miranda rights. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The statements were an unforeseeable result of the words and actions of the officer.⁵

5 The probative value of the remark is suspect, but that issue can be addressed by the trial court at the appropriate time.

For the foregoing reasons, the motion to suppress is hereby denied.

THE COURT

Calmar, J.