

STATE OF NEW YORK: COUNTY OF WESTCHESTER
JUSTICE COURT: TOWN OF YORKTOWN

FT 3

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION & ORDER

Index No. [REDACTED]

[REDACTED]

Defendant.

GERSTENZANG, J.

The following constitutes the Decision and Order of the Yorktown Justice Court in connection with the defendant's omnibus motion.

In deciding this motion, the Court has read and considered the Defendant's Notice of Motion with annexed affirmation and Exhibits, filed January 13, 2009, the People's Affirmation in Opposition and Memorandum of Law, filed February 10, 2009, the Defendant's Reply Affirmation, filed February 23, 2009, cases cited in the parties papers, as well as the contents of the Court's file for this matter and the Court's own research.

The defendant herein stands accused of

- Reckless Driving in violation of Vehicle and Traffic Law Section 1212,
- Speed not Reasonable and Prudent, in violation of Vehicle and Traffic Law Section 1180A,

- Improper Passing on the Right, in violation of Vehicle and Traffic Law Section 1193. and
- Operating a Motor Vehicle on a Public Highway while using a Mobile Phone in violation of Vehicle and Traffic Law Section 1225-C(2)(A).

In connection with the foregoing accusations there has been filed with the Court a Simplified Information for each of them, but there has also been filed with the Court a so-called "long form misdemeanor information" regarding the Reckless Driving charge.

1. The defendant moves for dismissal of the long-form misdemeanor information pursuant to CPL § 170.30(1)(a), in that, according to defendant, the People improperly attempted to supersede a simplified traffic information in filing it and in that it fails to spell out the crime of Reckless Driving,
2. The defendant also moves for an order dismissing the simplified traffic informations because the supporting deposition voluntarily tendered by the People fails to comply with numerous statutory mandates and does not provide reasonable cause to support the charged provisions, and
3. The defendant also moves for an order precluding introduction of any material described in CPL 710.30 because the 710.30(1)(a) notice was untimely and in that no notice pursuant to 710.30(1)(b) has been served at all.

A) The misdemeanor information

The long form information charging the defendant herein with Reckless Driving was filed while the simplified traffic information charging the same offense

was pending, and no request was made to dismiss the simplified information. The long form information therefore must be viewed as an attempt to supersede the simplified information. A long form information cannot be used to supersede a simplified traffic information, and therefore the long form information charging the defendant with reckless driving, which was filed at the time that a simplified traffic information charging the identical offense was pending, is a nullity and it is DISMISSED.

B. The four simplified informations.

CPL 100.25 provides for the filing of supporting depositions of the complainant police officer or public servant. The People in this case voluntarily filed and served a supporting deposition of one Roberto Garcia, who is not the complainant police officer and is not a public servant. A supporting deposition that is voluntarily provided by the People within the time period for the defendant to make a proper demand therefor in effect "moots" the defendant's right to demand the same, and thus, the People, in supplying the deposition, must satisfy the minimum requirements as set forth in CPL 100.25 (see *People v Key*, 87 Misc. 2nd, 262, 391 N.Y.S.2d 781,785),

The supporting deposition filed herein does not meet the requirements of CPL 100.25 because, among other things, it is not made by the complainant police officer or public servant. All four simplified informations are therefore rendered facially insufficient and are DISMISSED.

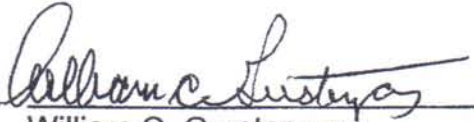
In view of the fact that the foregoing results in the dismissal of all of the accusatory instruments in this case, the other issues raised in the defendant's moving papers are not reached.

All of the accusatory instruments in this case are accordingly
DISMISSED,

This shall constitute the Decision and Order of the Court.

Dated: Yorktown Heights, New York
April 6, 2009

Enter: *April 6, 2009*



William C. Gerstenzang
Yorktown Town Justice

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