

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: SAP

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THE PEOPLE OF THE STATE OF NEW YORK :

DECISION AND
RECOMMENDATION

-against-

████████████████████

Docket No. ████████████████████

Defendant.

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DEBORAH STEVENS MODICA, J.:

The defendant has been charged with Reckless Driving and moves, in an omnibus motion, for Dismissal of the Information as Defective.

The Court has read the defendant's moving papers and has reviewed the court file and finds as follows:

DISMISSAL OF THE INFORMATION

The defendant moves for dismissal of the information as defective (CPL 170.30 [1] [a]; 170.35 [1] [a]). The Court has read the information and finds that it fails to meet the requirements for facial sufficiency pursuant to CPL 100.15 and 100.40.

A legally sufficient information must contain non-hearsay allegations establishing, if true, every element of the offense charged and the defendant's commission thereof. The allegations of the factual part of an information, together with those of any supporting depositions which may accompany it, must provide reasonable cause to believe that the defendant committed the crime charged. CPL §§ 100.40 and 70.10(2). *People v. Casey*, 95 N.Y.2d 354, 361-362 (2000); *People v. Inserra*, 4 NY3d 30(2004).

The factual allegations contained in the instant information, in pertinent part, read as follows:

At T/P/O...Deft was also speeding. Deft stated "I didn't stop because no one was there to stop for." Refused to pull over when instructed to do so. Deft started screaming "You rookie cop - my nephew is a cop and your desk sgt. will hear from me."

The information charges the defendant with Reckless Driving, in violation of Vehicle and Traffic Law § 1212, which is defined in pertinent part as follows:

§ 1212 Reckless driving

Reckless driving shall mean driving or using any motor vehicle, motorcycle or

other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway. Reckless driving is prohibited. Every person violating this provision shall be guilty of a misdemeanor.

The defendant asserts that the allegation of his "running a stop sign" cannot be the sole basis of a Reckless Driving charge, citing the holding in *People v Garo*, 208 Misc 496 (1955). The allegation that the defendant was "speeding," without more, is conclusory, and therefore, may not form the basis for Reckless Driving. See, *People v. Dumas*, 68 NY2d 729, 506 N.Y.S.2d 319, 497 N.Y.S.2d 686 (1986). This leaves the only remaining factual allegation that the defendant "went through stop sign w/o stopping or slowing down." Since the factual allegations do not specify how these actions by the defendant "unreasonably interfered with the free and proper use of the public highway or unreasonably endangers users of the public highway" the information is insufficient, and is therefore dismissed.

This opinion constitutes the decision and order of the Court.

Dated: July 23, 2008
Kew Gardens, New York



Deborah Stevens Modica, JCC