

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT B01

HON. ELDEN S. FOX, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. 9BV00520

MARK [REDACTED],)

DEFENDANT.)

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

FRIDAY, MAY 22, 2009

APPEARANCES:

FOR THE PEOPLE:

KEVIN LIU
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

RONALD RICHARDS
ATTORNEY AT LAW

BRADLEY S. SANDLER
ATTORNEY AT LAW

ORIGINAL

CARYN HOBBS, CSR NO. 9432
OFFICIAL REPORTER

1 BEVERLY HILLS, CALIFORNIA; FRIDAY, MAY 29, 2009

2 A.M. SESSION

3 --00000--

4
5 THE COURT: OKAY. BOTH SIDES HAVING RESTED, I'LL HEAR
6 ARGUMENT FROM THE PEOPLE FIRST. AND I'LL ALLOW THE DEFENSE
7 TO ARGUE AS IT RELATES TO BOTH ISSUES.

8 MR. LIU: YOUR HONOR, WITH REGARD TO MR. [REDACTED]
9 BASED ON THE TESTIMONY OF DEPUTY VAVAKIN IT'S CLEAR THAT
10 THERE WERE AT LEAST TWO TRAFFIC VIOLATIONS THAT OCCURRED.
11 HE STOPPED THE VEHICLE PURSUANT TO INVESTIGATION OF THOSE
12 TRAFFIC VIOLATIONS AT WHICH POINT HE THEN WAS ABLE TO
13 OBSERVE AN ODOR. DEPUTY VAVAKIN STATED THAT HE NOT ONLY
14 HEARD BUT ALSO SAW THE TIRES SPINNING AND SCREECHING AND
15 THAT HE SAW WHITE SMOKE COMING FROM THE TIRES. HE PACED THE
16 VEHICLE BY LOOKING AT HIS SPEEDOMETER AND SAW THAT IT WAS
17 EXCEEDING THE SPEED LIMIT.

18 I UNDERSTAND EVEN THOUGH MR. [REDACTED] HAS GIVEN
19 TESTIMONY DIFFERENT THAN WHAT DEPUTY VAVAKIN SAID HAPPENED
20 THAT NIGHT, I THINK THAT IT SHOULD BE REGARDED WITH
21 SUSPICION BOTH BASED ON HIS INTEREST IN HAVING -- NOT HAVING
22 VIOLATED ANY OF THE LAWS AT THAT TIME AND ALSO BASED ON HIS
23 RECOLLECTION. HE DID ADMIT TO HAVING HAD ALCOHOL EVEN
24 THOUGH HE SAYS HE DIDN'T FEEL THE EFFECTS. I DON'T BELIEVE
25 HE'S BEING TRUTHFUL AS TO THE AMOUNT OF ALCOHOL HE HAD AND
26 ALSO HIS PERCEPTION OF THE EFFECTS ON HIM.

27 THE PEOPLE BELIEVE THAT THE STOP WAS LAWFUL
28 SUPPORTED BY PROBABLE CAUSE IN THE FACT THAT THE DEPUTY

1 OBSERVED THESE VIOLATIONS AND THAT THE DEFENSE MOTION TO
2 SUPPRESS SHOULD BE DENIED.

3 THE COURT: AS TO MR. [REDACTED], DID YOU WANT TO ADDRESS
4 THOSE ISSUES?

5 MR. LIU: YES, YOUR HONOR. THE PEOPLE WOULD ARGUE
6 THAT LEGALLY THAT MR. [REDACTED] WAS NOT DETAINED. I KNOW THAT
7 THE COURT HAS ALREADY INDICATED THAT MR. [REDACTED] WOULD NOT
8 HAVE FELT FREE TO LEAVE. THERE ARE PEOPLE THAT ARGUE THAT
9 NO INDIVIDUAL CITIZEN WOULD EVER FEEL FREE TO LEAVE WHEN
10 AROUND A PEACE OFFICER; HOWEVER, THE COURTS HAVE CARVED OUT
11 SPECIFICALLY THAT THERE IS SUCH A THING AS A CONSENSUAL
12 ENCOUNTER.

13 AND WHILE THE VEHICLE WAS DETAINED, YOU HEARD
14 TESTIMONY FROM DEPUTY VAVAKIN THAT HE NEITHER INSTRUCTED ANY
15 OF THE OTHER INDIVIDUALS THAT WERE IN THE VEHICLE THAT THEY
16 WERE UNDER INVESTIGATION --

17 THE COURT: IF YOU'RE GOING TO ARGUE CONSENSUAL
18 ENCOUNTER, THEN WE CAN END THE MOTION NOW BECAUSE THERE IS
19 SPECIFIC CASE LAW RELATING TO THE FACT THAT OCCUPANTS OF A
20 VEHICLE WHICH ARE DETAINED ARE IN FACT DETAINED BECAUSE
21 YOU'RE ESSENTIALLY BEING CARRIED IN THE VEHICLE. SO LET'S
22 MOVE ON BEYOND THE CONSENSUAL ENCOUNTER ASPECT.

23 MR. LIU: DEPUTY VAVAKIN STATED THAT HE FOLLOWED
24 STANDARD PROCEDURE IN ASKING FOR IDENTIFICATION FROM THE
25 OTHER OCCUPANTS OF THE VEHICLE IN ORDER TO -- AS THE COURT
26 WELL KNOWS, TO COMPLETE A WELL-WRITTEN POLICE REPORT, IT
27 WOULD INVOLVE ALL OCCUPANTS OF THE VEHICLE.

28 AND AT THAT POINT WHEN HE WENT AND CONTACTED

1 MR. [REDACTED] WHO WAS STILL SEATED IN THE VEHICLE AND HAD
2 NOT -- BEYOND BEING CARRIED OVER IN THE VEHICLE HAD NOT
3 SUBMITTED TO AUTHORITY IN ANY OTHER WAY, HE OBSERVED SIGNS
4 THAT HE, DEPUTY VAVAKIN, RECOGNIZED BASED ON HIS BACKGROUND,
5 TRAINING AND EXPERIENCE ARE INDICATIVE OF AN INDIVIDUAL
6 UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE. AT THAT
7 POINT HE HAD REASONABLE SUSPICION TO CONTINUE AN
8 INVESTIGATION.

9 THE COURT: OKAY. MR. RICHARDS.

10 MR. RICHARDS: YES, YOUR HONOR. FIRST AS TO
11 MR. [REDACTED], I CITED EXTENSIVELY IN MY BRIEF THAT 23109 IS
12 NOT SCREECHING TIRES. THERE HAS TO BE A DANGEROUS AND
13 IMPRUDENT SPEED IN THE PRESENCE OF ANOTHER. YOU'RE SUPPOSED
14 TO BE EXHIBITING THE SPEED, THERE'S ALL SORTS OF CARS. JUST
15 SCREECHING TIRES ALONE, HIS ANALYSIS OF 23109 IS INCORRECT.

16 THERE'S EVEN A JURY INSTRUCTION THAT'S
17 APPLICABLE. 168.60 DEFINES A SPEED CONTEST, AND I DON'T
18 THINK THERE WAS ANY EVIDENCE AT ALL WITH RESPECT TO
19 MR. [REDACTED] THAT HE VIOLATED 23109(C). IT'S JUST NOT THERE.

20 THE FACT THAT HE HEARD SCREECHING TIRES, IT WAS
21 RAINING. HE SAID IT HAD RAINED EARLIER. OKAY. MAYBE THE
22 STREETS WERE WET. I DON'T THINK THAT'S A CRITICAL FACT.

23 I THINK THE CRITICAL FACT IS THE OFFICER'S
24 INACCURATE APPLICATION OF THE EXHIBITION OF SPEED. YOU'RE
25 SUPPOSED TO BE DOING IT IN FRONT OF SOMEBODY ELSE THAT IS
26 KNOWN TO THE DRIVER IN THE PRESENCE OF ANOTHER PERSON. IT
27 COULD HAVE BEEN ONE OF THOSE OTHER CARS THAT SCREECHED THE
28 TIRES.

1 AND THEN AS FAR AS THE FACT THAT HE TRIES TO
2 SAVE THE STOP BY SAYING, "WELL, I PACED HIM," I MEAN, IT WAS
3 ONLY FOUR BLOCKS. THERE WAS NO EVIDENCE FROM THE DEPUTY
4 THAT THE SPEED WAS IN AN UNREASONABLE MANNER. THE COURT HAS
5 HEARD MANY SPEED TRAP ARGUMENTS I'VE HAD OVER THE YEARS IN
6 FRONT OF THIS COURT.

7 THERE HAS TO BE TESTIMONY WHICH I PURPOSELY
8 AVOIDED THAT THE SPEED WAS IN AN UNREASONABLE MANNER FOR THE
9 TIME, DATE AND CIRCUMSTANCES. WE FOLLOW UNDER 23350 THE
10 BASIC SPEED LAW IN CALIFORNIA, AND SPEED ALONE DOES NOT
11 GOVERN IT.

12 THERE WAS NO TESTIMONY ELICITED BY THE PEOPLE
13 WHICH I STAYED AWAY FROM THAT SOMEHOW MR. [REDACTED] SPEED
14 WAS DANGEROUS OR UNREASONABLE FOR THAT TIME OF THE DAY, SO I
15 DON'T BELIEVE THEY EVEN SHOWED A VIOLATION. AND I THINK
16 THAT THE STOP WAS ILLEGAL, AND ANYTHING THAT RESULTED FROM
17 THE STOP SHOULD BE SUPPRESSED.

18 AS FAR AS MR. [REDACTED] IS CONCERNED, THAT WAS ONE
19 OF THE WORST TYPE OF TESTIMONIES I'VE EVER HEARD WITH
20 RESPECT TO --

21 THE COURT: LET'S NOT JUST CHARACTERIZE. LET'S JUST
22 MAKE THE LEGAL ARGUMENT.

23 MR. RICHARDS: SORRY. MR. [REDACTED] WAS NERVOUS AND
24 SWEATY. WELL, IT WAS RAINING. EVERYBODY'S NERVOUS WHEN
25 THEY GET PULLED OVER. THERE WAS NO BASIS WHATSOEVER TO TAKE
26 HIS DRIVER'S LICENSE. THAT FURTHER COMPOUNDED THE
27 DETENTION. HE CERTAINLY CAN'T LEAVE WITHOUT HIS I.D.

28 AND THERE WAS NO EVIDENCE BEFORE THE COURT AS TO

1 WHAT FIELD SOBRIETY TESTS WERE TAKEN, WHAT CONSTITUTES UNDER
2 THE INFLUENCE. I SPECIFICALLY DIDN'T ASK THOSE QUESTIONS
3 BECAUSE I DIDN'T BELIEVE AN ADEQUATE FOUNDATION WAS MADE TO
4 SHOW THE COURT THERE WAS PROBABLE CAUSE THAT YOU WOULD HAVE
5 ISSUED A WARRANT TO ARREST MR. [REDACTED] AND SEARCH HIM.

6 HIS SEARCH OF MR. [REDACTED] WAS BASED ON THE
7 EXCEPTION OF SEARCH INCIDENT TO ARREST. THE COURT HEARD
8 NONE OF THE STANDARD TYPE OF EXAMINATIONS THAT ARE DONE WHEN
9 SOMEONE IS ARRESTED FOR AN 11550. I WOULD NOTE THAT
10 MR. [REDACTED] WAS NEVER CHARGED WITH 11550 AND THAT THERE WAS
11 NO EVIDENCE THAT MR. [REDACTED] WAS UNDER THE INFLUENCE.

12 THE FACT IS, HE WAS SINGLED OUT BY THE OFFICER.
13 THE OFFICER FIRST SAID HE DID NOT REMEMBER ANYBODY ASKING
14 FOR I.D. THEN HE TRIED TO SAY AFTER YOU QUESTIONED HIM,
15 WELL, THE OTHER PASSENGERS WERE ASKED FOR I.D. I THINK HE
16 JUST JUMPED THE GUN BY ARRESTING MR. [REDACTED] AND SEARCHING
17 HIM, AND WHATEVER WAS RECOVERED AS A RESULT OF THAT SEARCH
18 SHOULD BE SUPPRESSED.

19 THE COURT: OKAY. MR. LIU, DO YOU WANT TO RESPOND AS
20 TO MR. O [REDACTED]. I DO HAVE AN ISSUE AS TO THAT BECAUSE I
21 DON'T HAVE ANY FOUNDATION HERE.

22 MR. LIU: YES, YOUR HONOR. THE ISSUE OF THE SEARCH,
23 WE'RE ONLY HERE TO DETERMINE WHETHER OR NOT THE SEARCH WAS
24 VALIDATED BY THE DETENTION. IN TERMS OF THE OBSERVATIONS
25 THAT WERE MADE BY DEPUTY VAVAKIN, NONE OF THOSE ARE RELATED
26 TO ANY SUBMISSION TO AUTHORITY BEYOND WHAT THE COURT HAD
27 NOTED OF BEING CARRIED OVER TO THE CURB. THERE ARE PHYSICAL
28 OBSERVATIONS AS TO MR. [REDACTED] PHYSICAL STATE.

1 HE DID NOT PROCEED TO GIVE ANY FURTHER EVIDENCE
2 BASED ON SUBMISSION TO AUTHORITY, SO THEY'RE NOT THE RESULTS
3 OF AN UNREASONABLE SEARCH OR SEIZURE, THE POINT AT WHICH
4 DEPUTY VAVAKIN, BASED ON HIS BACKGROUND, TRAINING AND
5 EXPERIENCE IN RECOGNIZING OBJECTIVE SYMPTOMS OF SOMEONE
6 UNDER THE INFLUENCE DETERMINED TO CONDUCT AN INVESTIGATION
7 THAT LED TO AN ARREST THAT LED TO THE SEARCH.

8 THE DETENTION IS VALIDATED BASED ON HIS
9 OBSERVATIONS. NO EVIDENCE WAS RETRIEVED BECAUSE OF AN
10 UNREASONABLE SEARCH OR SEIZURE AS TO MR. [REDACTED].

11 MR. RICHARDS: I'M JUST ARGUING THE SEARCH INCIDENT TO
12 ARREST. THAT WAS THE LACK OF FOUNDATION, YOUR HONOR.

13 THE COURT: OKAY. ANYTHING FURTHER?

14 MR. LIU: YOUR HONOR, IF THE ISSUE IS WHETHER OR NOT
15 THE ARREST WAS VALIDATED, I WOULD ASK TO REOPEN, AND I WOULD
16 SEEK FURTHER TESTIMONY FROM DEPUTY VAVAKIN.

17 THE COURT: THAT'S WHY WE DO THIS INITIALLY. THE
18 ISSUE THAT THE COURT HAS IS DEPUTY VAVAKIN MAY OR MAY NOT
19 HAVE QUALIFICATIONS. I HAVE NO IDEA BECAUSE HE HASN'T
20 DESCRIBED WHAT TESTS WERE CONDUCTED, WHETHER HE FORMED AN
21 OPINION THAT HE WAS UNDER THE INFLUENCE OF A CNS STIMULANT
22 OR SOME OTHER KIND OF DRUG AND WHETHER WHAT HE OBSERVED IS
23 CONSISTENT WITH SOMEONE BEING UNDER THE INFLUENCE OF A
24 PARTICULAR KIND OF DRUG. HE SIMPLY SAYS HE WAS NERVOUS AND
25 PERSPIRING. WHAT DOES THAT MEAN IN A VACUUM?

26 OKAY. MATTER'S SUBMITTED?

27 MR. RICHARDS: YES.

28 [REDACTED]

1 PRODUCE AS IT RELATES TO DEPUTY VAVAKIN'S SPECIFIC
2 OBSERVATIONS THAT WOULD SATISFY THE COURT.

3 MR. LIU: THANK YOU, YOUR HONOR.

4 THE COURT: BUT SIMPLY PERSPIRATION AND NERVOUSNESS
5 BASED ON THIS RECORD IS NOT SUFFICIENT IN THE COURT'S MIND.

6 AS TO MR. , I WOULD ASK THAT YOU ADVISE
7 COUNSEL IF YOU INTEND TO REFILE AND PRESENT ADDITIONAL
8 EVIDENCE SO THAT HE MAY SURRENDER WITH COUNSEL. HE HAS
9 POSTED A BOND, AND BASED ON THAT I DON'T WANT A SITUATION OF
10 HIM BEING ARRESTED WITHOUT THE OPPORTUNITY TO SURRENDER ON
11 THIS.

12 MR. RICHARDS: YOUR HONOR, COULD I JUST REQUEST BEFORE
13 YOU MAKE ANY FURTHER RULINGS, UNDER PENAL CODE SECTION 1388
14 IF THE COURT WOULD FIRST EXONERATE THE BOND.

15 THE COURT: I'M GOING TO EXONERATE THE BOND.

16 MR. RICHARDS: AND THEN BEFORE ANY DISMISSAL, IF
17 MR. IS NOW UNDER O.R. STATUS, THEN HE'S ENTITLED TO
18 A LETTER FIRST BY THE D.A.

19 THE COURT: THEY'RE FAMILIAR WITH THE CODE.

20 MR. RICHARDS: OKAY.

21 THE COURT: OKAY.

22 MR. RICHARDS: WELL, NOT EVERYONE IS.

23 THE COURT: THE BOND IN THIS MATTER IS EXONERATED.
24 AND AS MR. RICHARD HAS POINTED OUT, THE PEOPLE ARE ADVISED
25 TO REVIEW 1388 SO THAT WE DON'T HAVE THAT SITUATION.

26 AND MR. RICHARDS, YOUR OFFICE WILL ACCEPT THE
27 LETTER OR YOU WANT IT SENT DIRECTLY TO THE CLIENT?

28 MR. RICHARDS: IT CAN BE SENT TO MY OFFICE AT THE

1 ADDRESS LOCATED ON MY PLEADINGS.

2 THE COURT: THAT WILL BE UP TO THE PEOPLE.

3 OKAY. MR. , YOU'RE DISCHARGED AT THIS
4 POINT.

5 DEFENDANT OR: THANK YOU, YOUR HONOR.

6 MR. RICHARDS: I DON'T THINK WE FORMALLY -- HAS THE
7 COURT FORMALLY DISMISSED THE COUNT NOW?

8 THE COURT: I DON'T KNOW. CAN THE PEOPLE PROCEED
9 WITHOUT THE COCAINE?

10 MR. LIU: NO.

11 THE COURT: AS TO MR. (?

12 MR. LIU: NO, NOT AS TO MR. .

13 THE COURT: PEOPLE UNABLE TO PROCEED. THE CASE IS
14 DISMISSED. OKAY. HE IS DISCHARGED.

15 DEFENDANT O : THANK YOU, YOUR HONOR. I
16 APPRECIATE THAT.

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