



PEOPLE STATE NEW YORK v. SULAMITA HEYMAN

469 N.Y.S.2d 874 (1983) | Cited 0 times | New York Supreme Court | November 30, 1983

OPINION OF THE COURT

The defendant in this case which appears to be one of first impression was charged with driving a motor vehicle 70 miles an hour on Interstate Route 287 in the City of White Plains, County of Westchester, State of New York.

On November 28, 1983, a trial was held before me at the conclusion of which I found that the defendant was in fact driving 70 miles an hour at the time and place alleged in the simplified traffic information issued by the New York State Trooper. The simplified traffic information charged the defendant with violating subdivision (b) of section 1180 of the Vehicle and Traffic Law of the State of New York.

The defendant's attorney moved to dismiss the information and the underlying charge on the grounds that the People had presented no evidence with relation to the posting of speed limit signs.

The trooper who conducted the People's prosecution conceded that no such testimony or evidence had been given, but took the position that none was required since posting is not required when a defendant is charged with driving in excess of 55 miles an hour.

Normally a driver is charged with exceeding a speed limit fixed by a public authority or a municipal corporation and the People have the burden of proof to show that the speed limit was properly posted and that such posting conformed with the requirements of 17 NYCRR 208.2 and the Manual of Uniform Traffic Control Devices. In this case, however, the defendant is charged with violating a specific enactment of the Legislature itself, the Vehicle and Traffic Law, which reads in pertinent part as follows:

"[Section] 1180. Basic rule and maximum limits. * * *

"(b) Except when a special hazard exists that requires lower speed for compliance with subdivision (a) of this section, or when maximum speed limits have been established as hereinafter authorized, no person shall drive a vehicle at a speed in excess of fifty-five miles per hour."

This section of the law is re-enforced by the next section of the Vehicle and Traffic Law, which reads in pertinent part as follows:



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"[Section] 1180-a. Maximum speed limits.

"Notwithstanding any other provision of law, no city, village, town, county, public authority, division, office or department of the state shall maintain or create (a) any speed limit in excess of fifty-five miles per hour on any road, highway, parkway or bridge".

Read together, these two sections clearly state that no one shall drive a vehicle in excess of 55 miles an hour on any public highway in New York State; and further, that no legislative or administrative body may create a speed limit in excess of 55 miles an hour for any public highway.

The court holds as a matter of law that the posting of speed limit signs is not required in order for the People to convict a driver of operating a motor vehicle in excess of 55 miles an hour since the Vehicle and Traffic Law itself prohibits such speeds anywhere on any public highway in the State of New York. (Cf. *People v Churton*, 67 Misc. 2d 645, 648; *People v Hall*, 108 Misc. 2d 507, 510.)

The defendant's motion to dismiss is denied. The defendant is found guilty, and fined the sum of \$30 plus a \$10 penalty assessment, which must be paid on or before December 20, 1983. The defendant must submit the conviction stub of her license together with the payment of the fine at that time.

