



People v. Trunk

2007 NY Slip Op 52308(U) (2007) | Cited 0 times | New York Supreme Court | December 3, 2007

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Defendant, an attorney, was issued a Uniform Traffic Ticket (the "Ticket") for operating a motor vehicle at a speed of 51 miles per hour in a 30 miles per hour zone, in violation of § 1180(d) of the New York Vehicle & Traffic Law. Representing himself, he seeks dismissal of the charge, pursuant to §§ 100.40(2), 100.20 and 100.25(2) of the New York Criminal Procedure Law (the "CPL"), on the grounds that: (i) the supporting deposition requested by, and admittedly served upon, him (the "Supporting Deposition") was legally insufficient since it merely repeated, rather than supplemented, the factual allegations asserted in the Ticket, purportedly in contravention of CPL § 100.20; and, as a consequence, (ii) no legally sufficient supporting deposition was timely served within the period prescribed by CPL 100.25(2).

A determination of this motion requires this Court to consider the definitional requirements of a supporting deposition prescribed by two apparently conflicting provisions of the CPL

- - - §100.25(2) and §100.20.

Section 100.25(2) of the CPL entitles a defendant charged with a traffic offense to receive a supporting deposition of the police officer containing allegations of fact providing reasonable cause to believe that the defendant committed the offense charged:

"A defendant charged by a simplified information is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him, or if he is represented by an attorney, upon his attorney, a supporting deposition of the complainant police officer or public servant, containing allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged." CPL § 100.25 (2).

Section 100.20 of the CPL prescribes the required content of a supporting deposition, but, by its express terms, seemingly is applicable only when that supporting deposition is verified by a person other than the complainant, as where a deposition of a corroborating witness is provided to a defendant:



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"A supporting deposition is a written instrument accompanying or filed in connection with an information, a simplified information, a misdemeanor complaint or a felony complaint, subscribed and verified by a person other than the complainant of such accusatory instrument, and containing factual allegations of an evidentiary character, based either upon personal knowledge or upon information and belief, which supplement those of the accusatory instrument and support or tend to support the charge or charges contained therein". CPL § 100.20 (Emphasis added).

At issue on this motion is whether the use of the word "supplement" in CPL § 100.20 requires that a supporting deposition sworn to by a complainant/police officer and served pursuant to CPL § 100.25(2) may merely repeat the sufficiently stated elements of the offense charged in the Traffic Ticket, or, instead, must add more language to that contained in the Traffic Ticket.

For the reasons articulated below, this Court holds that the Supporting Deposition need not supplement the Traffic Ticket if the Traffic Ticket itself already satisfies the content requirements of both CPL § 100.25(2) and 100.20. Accordingly, Defendant's motion to dismiss is denied.

In general, the content of a supporting deposition, whether prescribed by CPL § § 100.25(2) or 100.20, need not be highly detailed. To be sufficient, a supporting deposition must contain merely enough facts concerning each element of the offense charged to provide reasonable cause to believe that the statute was violated. Thus, in *People v. Hohmeyer*, 70 NY2d 41, 510 NE2d 317, 517 NYS2d 448 (1987), the New York Court of Appeals held that a supporting deposition prescribed by both CPL § § 100.20 and 100.25 was legally sufficient, even though proffered in the form of a pre-printed document containing only a checklist of potentially applicable police observations, where the check marks in the applicable boxes signified the police officer's observations. The defendant there urged that the supporting deposition was "no more than a check sheet of multiple choice information containing no factual allegations of an evidentiary nature supporting the charge", and, therefore, failed to satisfy the pleading requirements of CPL § § 100.20 and 100.25(2). *People v. Hohmeyer*, supra, 70 NY2d at 43, 510 NE2d at 318, 517 NYS2d at 449. Overturning both the motion court and the intermediate appeals court, the Court of Appeals unanimously held that the motion challenging the simplified traffic information for the claimed insufficiency of the supporting deposition should have been denied where questions unanswered by the supporting deposition would be matters of proof at the trial:

"Here, the factual statements in the deposition are communicated by check marks made in boxes next to the applicable conditions and observations signifying the complainant's allegations as to the existence of those conditions and the truth of those observations. We hold such signification sufficient to meet the requirements of CPL 100.20 that the supporting deposition be a written instrument' containing factual allegations of an evidentiary character' which support or tend to support the charge or charges contained therein' . . . The supporting deposition meets the requirements of CPL 100.25(2), in that it contains factual allegations providing reasonable cause to believe that the defendant committed the offense or offenses charged'." *People v. Hohmeyer*, supra,



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70 NY2d at 43-44, 510 NE2d at 319, 517 NYS2d at 450.

Thus, the Court of Appeals held that the supporting deposition there in controversy satisfied both CPL § § 100.20 and 100.25, notwithstanding the fact that the supporting deposition contained only minimal information consisting merely of check marks, without any narrative statement personalized by the complaining police officer. Any inquires unanswered by the supporting deposition would be matters of proof to be adduced at the trial. See also *People v. Worrell*, 10 Misc 3d 1063(A), 814 NYS2d 564 (Table), 2005 WL 3501576, 2005 NY Slip Op. 52111(U) (Just. Ct. Muttontown 2005) ("The supporting deposition, although not extensively detailed, contains sufficient facts which, together with the simplified information, would support a conviction of the charges alleged, and therefore is sufficient in a case such as this . . . [A] supporting deposition in a traffic case . . . need not provide evidentiary details. Rather, all the supporting deposition need state are facts from which it can be reasonably inferred that the violation charge [sic] was committed. Determination of whether that, in fact occurred, is to be made at trial."); 32 NY Jur.2d, Criminal Law, § 902 ("In order to be considered adequate, a supporting deposition in a case initiated by a simplified information must set forth facts in a plain and concise manner which provide reasonable cause to believe that the defendant committed every necessary element of the offense charged."); 7 NY Prac., New York Pretrial Criminal Procedure, § § 3:4-3:5 ("Needless to say, a Section 100.25 supporting deposition does not provide the defendant with particularly meaningful information about the allegations underlying the offenses charged."); 32 Carmody-Wait 2d, New York Practice, § 172:860.

Similarly, in *People v. Greenfield*, 9 Misc 3d 1113(A), 808 NYS2d 919 (Table), 2005 WL 2335491, 2005 NY Slip Op. 51518(U) (Just. Ct. Muttontown 2005), the defendant charged therein alleged, among other things, that the supporting deposition was "conclusory" rather than "evidentiary", and provided "not an iota of supplementary information" in addition to the facts contained in the simplified information itself. *People v. Greenfield*, supra, 2005 WL 2335491 at p. 5. In an extensive and well-reasoned opinion, the Court denied Defendant's motion to dismiss, commenting:

"[S]ince a simplified information is a statutory creation designed for handling the large volume of traffic infractions and petty offenses', it need not provide on its face reasonable cause' to believe the charged offense was committed. [Citation omitted]. Moreover, the simplified information in a traffic case has different and lesser requirements for facial sufficiency' than a misdemeanor information [Citation omitted]. For these reasons, the defendant in a traffic case is entitled (upon timely and proper request) to a supporting deposition as a matter of right.'; and the supporting deposition can supplement a simplified information to provide required details that the simplified information may omit. [Citations omitted.] The combination of the simplified information and the supporting deposition is sufficient to show reasonable cause' to sustain a proceeding by together alleging all requisite elements of the charged offense, and thus state a prima facie case for the People" . . .

"Because of the sparseness of a Simplified Traffic Information, a Supporting Deposition generally is necessary to render the accusatory instrument legally sufficient, and thus give the Court adjudicatory



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jurisdiction over the defendant [citations omitted]. Hence, a Supporting Deposition must set forth enough evidentiary facts in a plain and concise manner' to provide reasonable cause to believe that the defendant committed all of the necessary elements of the offense charged, failing which it must be rejected and the case dismissed. *People v. Greenfield*, supra, 2005 WL 2335491 at p. 5.

The Court further observed:

"... [T]o be sufficient, a Supporting Deposition must contain enough facts to allege all of the prerequisites of the offense specified in the statute, but only that. In other words, a supporting deposition need say what the People must prove, not how they will prove it. Likewise, a Supporting Deposition need not state all the evidentiary facts available to the deponent, but rather only enough facts to provide reasonable cause to believe that the statute was violated by the defendant, leaving for trial the question of whether the People will be able to prove that. *People v. Greenfield*, supra, 2005 WL 2335491 at p. 6.

The Court then considered defendant's claim that the supporting deposition there in controversy was insufficient because it merely parroted the traffic ticket itself. The Court acknowledged that since the supporting deposition did not state something in addition to the simplified information, it did not supplement the simplified information, in apparent contravention of CPL § 100.20. After considering the apparent conflict between CPL § § 100.25(2) and 100.20, the Court rejected Defendant's argument that CPL § 100.20 required that a supporting deposition must contain allegations in addition to a legally sufficient accusatory instrument:

"CPL § 100.25(2), which prescribes the form and content' of a supporting deposition, requires only that it contain allegations providing reasonable cause to believe that the defendant committed the offense or offenses charged'. The Court finds CPL § 100.25(2) to be the more specific of the two portions of the Criminal Procedure Law implicated here, and thus (in accordance with the rules of statutory construction detailed above) concludes that (as the title of § 100.25(2) says) § 100.25(2), not § 100.20, determines the appropriate content of a supporting deposition[in a traffic offense proceeding]".

"Logic also supports the conclusion that defendant is seeking to require too much from the Supporting Deposition. Where, as here, the Simplified Information itself satisfies the requirements of both the accusatory instrument and those of a Supporting Deposition, it would not make sense to require the Supporting Deposition to say more, merely because one provision of the statute uses the phrase supplement'. Such a rule would lead to an unreasonable rule whereby Supporting Depositions would have different requirements in different cases, and, in some cases, would have to do more than the legislature intended. That would require needless additional details by police in cases where, in reality, a supporting deposition is not even needed to state a prima facie case. . . . [S]upplementation of a Simplified Traffic Information in the Supporting Deposition is to be required only where the accusatory instrument is not in itself sufficient to do so . . . Thus, the Supporting Deposition here



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was and is legally sufficient". *People v. Greenfield*, supra , 2005 WL 2335491 at p. 7.

Thus, the Court held that the statutory requirements of CPL § 100.25(2) were not overridden by the language of CPL § 100.20; if a simplified information was legally sufficient in accordance with the standards articulated in CPL § 100.25(2), the fact that the supporting deposition did not add any additional language could not form the basis of a dismissal of the charge.

In the case at bar, Defendant apparently does not dispute the assertion by the People that the Traffic Ticket and the Supporting Deposition each individually set forth facts in a plain and concise manner which provide reasonable cause to believe that Defendant committed every necessary element of the offense charged in the Traffic Ticket. Indeed, Defendant does not point to a single specific pleading omission or deficiency in either the Traffic Ticket or the Supporting Deposition. Rather, Defendant couches his motion to dismiss entirely on the claim that since the Supporting Deposition is alleged merely to parrot the Traffic Ticket, the Supporting Deposition neither supplemented nor added anything to that Traffic Ticket and hence is legally insufficient.

As noted in the discussion above, CPL § 100.25(2) appears to require that a supporting deposition merely contain allegations of fact providing reasonable cause to believe that a defendant committed the offense charged. In apparent contrast, CPL § 100.20, on its face, appears to require that a supporting deposition supplement, or, according to Defendant, say something in addition to, the accusatory instrument, and not merely the same thing already alleged in that instrument.

This Court concludes that the provisions of CPL § 100.25(2), rather than the different requirements prescribed by CPL § 100.20, determine the appropriate content, and, hence, legal sufficiency of the Supporting Deposition here at issue. This conclusion is based upon a number of reasons.

First and foremost, a supporting deposition contemplated by CPL § 100.25(2) appears to be a distinct and different vehicle than a supporting deposition prescribed by CPL § 100.20 in several respects. Unlike a CPL § 100.20 supporting deposition, a CPL § 100.25(2) supporting deposition must be filed by the complainant of the simplified information who will generally be a police officer or other public servant:

"A section 100.25 supporting deposition differs in significant respects from a Section 100.20 supporting deposition. One important difference is that a section 100.25 supporting deposition must be filed by the complainant of the simplified information, who will always be a police officer or other public servant." NY Prac., New York Pretrial Criminal Procedure, § 3:5.

In contrast, a CPL § 100.20 supporting deposition generally consists of a corroborating affidavit supplied by a person other than the complainant of the accusatory instrument. See 7 NY Prac., New York Pretrial Criminal Procedure, § 3:4; P. Preiser, Practice Commentaries to McKinney's CPL § 100.20 ("A supporting deposition is an affidavit filed with a Criminal Court accusatory instrument



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(other than a prosecutor's information') setting forth additional facts of an evidentiary nature sworn to by a person other than the complainant") (Emphasis added). Moreover, unlike a CPL § 100.20 supporting deposition, a CPL § 100.25 supporting deposition need not be provided unless a demand therefor is made by the defendant, and, accordingly, may be waived by the defendant. 7 NY Prac., New York Pretrial Criminal Procedure, § 3:5. Thus, a supporting deposition contemplated by CPL § 100.25(2) appears to be a vehicle having requirements distinct from a supporting deposition prescribed by CPL § 100.20.

Moreover, as noted by the Court in *People v. Greenfield*, supra, 2005 WL 2335491 at p. 7, CPL § 100.25 appears to be the more specific of the two apparently conflicting provisions of the Criminal Procedure Law implicated in this case and, hence, should be followed. See *Erie County Water Authority v. Kramer*, 4 AD2d 545, 550, 167 NYS2d 557, 562 (4th Dept. 1957), aff'd 5 NY2d 954, 157 NE2d 712, 184 NYS2d 833 (1959); *Sheraton Suzuki, Inc. v. Caruso Auto Sales, Inc.*, 110 Misc 2d. 823, 825, 442 NYS2d 957, 959 (Sup. Ct. Erie Co. 1981); 97 NY Jur.2d, Statutes, § 184.

Above all, where a simplified information itself satisfies the requirements of both an accusatory instrument and a supporting deposition, it would make no logical sense to require the Supporting Deposition to say more than the Traffic Ticket, merely because one provision of the statute uses the phrase, "supplement". See *People v. Greenfield*, supra, 2005 WL 2335491 at p. 7.

In the case at bar, since the demand by Defendant for a Supporting Deposition was made pursuant to CPL § 100.25(2), the requirements of that statutory provision prevail. This Court holds that the Supporting Deposition served on Defendant is legally sufficient, notwithstanding the fact that it provides no supplementation to the legally sufficient Traffic Ticket.

In support of his motion, Defendant has cited three unreported opinions authored by Judicial Hearing Officers of the District Court, Nassau County, and of the Nassau County Traffic and Parking Violations Bureau in which it appears that Defendant or his law firm acted as counsel to unrelated defendants. To the extent that such legal authorities may appear to hold to the contrary, this Court respectfully declines to follow them.

The Supporting Deposition challenged by Defendant admittedly was served on June 21, 2007 following Defendant's June 13, 2007 demand therefor, well within the 30 day time period prescribed by CPL 100.25(2). Accordingly, the second branch of Defendant's motion to dismiss based on untimeliness of service of the Supporting Deposition is also denied.

The foregoing constitutes the decision and order of this Court.

