

**People v. Radik Pinkhasov, 2007/28786**  
**Decided: November 19, 2008**

Judge Robert H. Spergel

NASSAU COUNTY  
District Court

Representation:

Leslie Barkemeyer, A.D.A. of counsel to Kathleen M. Rice, District Attorney,  
Attorney for the Plaintiff, Nassau County District Court.

Joseph A. LoPiccolo, Esq, Attorney for the Defendant, Law Offices of Hession,  
Bekoff & Cooper, LLP

**Judge Spergel**

**DECISION AFTER HEARING**

On November 17, 2007, defendant, Radik Pinkhasov, was charged with violating one count of Section 1192.2 of the New York State Vehicle and Traffic law (Driving While Intoxicated), a misdemeanor, and one count of Section 1192.2(a) of the New York State Vehicle and Traffic law (Aggravated Driving While Intoxicated), also a misdemeanor.

A pre-trial hearing was ordered to determine defendant's motion to suppress. On October 16, 2008 a Huntley/Dunaway/Mapp hearing was held to determine the admissibility at trial of evidence obtained against the defendant.

The People produced Police Officer Robert Germani, the arresting officer, as a witness to testify. Officer Germani is a member of the Nassau County Police Department. The defendant did not call any witnesses. Based upon the credible evidence advanced at the hearing, the Court concludes the following:

**FINDINGS OF FACT**

On November 17, 2007 Police Officer Germani was working the 7P.M. X 5A.M. tour of duty. He was in a marked police vehicle, in uniform and working alone.

At approximately 12:15 A.M. Officer Germani received a radio call of a motor vehicle accident in the vicinity of 100 East Shore Road in Great Neck. Upon his arrival Officer Germani observed a vehicle with extensive front end damage in the middle to left lane of traffic on the northbound side. The defendant was standing directly next to the vehicle. Officer Germani asked defendant where he was coming from and defendant replied he was "coming back from school to visit his girlfriend."

Officer Germani was informed by Officer Sean Maass, the assisting Officer, that defendant was the driver of the vehicle involved in the accident. Officer Germani testified that Officer Maass had received this information from an eyewitness, however, Officer Germani could not identify the eyewitness.

In furtherance of his investigation, Officer Germani observed the defendant to have slurred speech, an odor of alcohol and glassy, bloodshot eyes. Officer Germani proceeded to observe the defendant perform Standard Field Sobriety tests administered by Officer Maass. The Field Sobriety Tests were performed on the side of the road, at night. Officer Germani testified that there was sufficient light to perform the tests. After defendant's performance on the Field Sobriety Tests, defendant was placed under arrest.

## **CONCLUSIONS OF LAW**

The Mapp/Dunaway Hearing:

The Court finds that Officer Germani lawfully approached defendant after receiving a radio call of a motor vehicle accident. Upon his arrival to the location of the accident, Officer Germani observed defendant standing outside a motor vehicle. This motor vehicle was in the roadway and had extensive front end damage. Officer Germani, as part of his initial investigation engaged defendant in conversation whereby defendant stated he was "coming back from school to visit his girlfriend." Officer Germani observed defendant to have slurred speech, an odor of alcohol and glassy, bloodshot eyes. Based upon his observations and experience concerning indications of alcohol, Officer Germani observed Officer Maass administer Field Sobriety Tests. The results of the Field Sobriety Tests showed indicia of intoxication.

Notwithstanding the fact that Officer Germani had no personal knowledge of defendant's operation of the motor vehicle, he had received information

concerning defendant's operation of the vehicle from Officer Maass. The "Fellow Officer Rule" authorizes a receiving Officer to assume that the information provided by the sending Police Officer is reliable and accurate.

The "Fellow Officer Rule" is not however without its limitations.

Although hearsay is admissible in pre-trial suppression hearings, when a "receiving officer" accepts information from a "sending officer," the acceptance of the information must be based upon the personal knowledge of the "sending officer." When the information of the "sending officer" is not based upon personal knowledge, but rather based upon the knowledge of a civilian witness, this information must be shown to be both credible and reliable. ([People v. Parris 83 N.Y.2d 342 \(1994\)](#)). In Parris, the Court adopted the two prong analysis concerning the reliability of eyewitnesses in establishing probable cause for a warrantless arrest.

The Criminal Procedure Law utilizes the phrase "reasonable cause" instead of "probable cause" CPL 70.10(2). As it has emerged through case law, the probable cause, or, reasonable cause to arrest an individual has become more of a standard of common sense.

Citing CPL 70.10(2), the book *Handling the DWI Case In New York (2004-05)*, by Peter Gerstenzang and Eric H. Silla, at page 38 states the following:

"Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it.

Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay."

The Court of Appeals in [People v. Carrasquillo, 54 N.Y.2d 248, 252, 445 N.Y.S. 2d 97, 100 \(1981\)](#), stated that:

"In passing on whether there was probable cause for an arrest, we consistently have made it plain that the basis for such a belief must not only be reasonable, but it must appear to be at least more probable than not that

a crime has taken place and that the one arrested is its perpetrator, for conduct equally compatible with guilt or innocence will not suffice."

In [People v. Farrell, 89 A.D.2d 987, 454 N.Y.S.2d 306 \(1982\)](#), the Second Department, applied this "common sense" standard for making an arrest in drinking and driving cases.

"[W]hether, viewing the facts and circumstances as they appeared at the time of the arrest, a reasonable person in the position of the officer could have concluded that the motorist had operated the vehicle while under the influence of intoxicating liquor."

Turning to the instant matter, Officer Germani is an experienced Police Officer. Drawing upon his experiences, both personal and professional, Officer Germani observed that defendant was standing directly next to a vehicle with extensive front end damage from an accident and that the vehicle was still in the roadway. Moreover, defendant stated to Officer Germani that he was "coming back from school to visit his girlfriend." Further observations by Officer Germani showed defendant to have slurred speech, an odor of alcohol and glassy, bloodshot eyes. Officer Germani also observed defendant perform Field Sobriety Tests.

Notwithstanding Officer Germani having no personal knowledge of defendant's operation of the vehicle, for all the reasons stated herein, the Court concludes that considering the totality of the evidence presented, Officer Germani had probable cause to place defendant under arrest for [Driving While Intoxicated. People v. Rollins, 118 A.D.2d 949, 499 N.Y.S.2d 817 \(3d Dept. 1986\)](#).

The Huntley Hearing:

At the conclusion of testimony, it is clear that the statements were spontaneously made in response to legitimate preliminary and pre-custodial inquiries which were investigatory in nature. Thus, the statements at issue contained in the 710.30 notice will be admissible at trial.

So Ordered: