

D.W.I. LINK

A newsletter by Taheri & Todoro, P.C., devoted to Driving While Intoxicated law in New York State

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Geographic Limits Imposed on Arresting Officer

In most DWI cases, the initial stop of the driver is usually the result of the arresting officer observing one or more Vehicle and Traffic Law violations. Such violations are classified as “petty offenses” under CPL § 1.20[39]. According to CPL § 140.10[2](a), a police officer may only arrest a person for a petty offense when “[s]uch offense was committed or believed by him to have been committed within the geographical area of such police officer’s employment....” In contrast, CPL § 140.10[3] provides that a police officer may arrest a person for a “crime” “whether or not such crime was committed within the geographical area of such police officer’s employment....”

DWI is a crime and therefore, on its face, is not subject to the geographic limitations set forth for a petty offense. However, because the initial reason for stopping a drunk driver is usually observation of traffic infractions that fall within the definition of a petty offense, the authority of a police officer to act outside his geographic jurisdiction is not so clearly defined.

This issue was recently addressed by the Supreme Court of New York, Erie County, in the case of *People v. Graham*, 192 Misc2d 528 (Erie Co. Sup. Ct. 2002). In *Graham, supra*, a member of the Town of Amherst Police Department was driving southbound on Niagara Falls Boulevard. The center line of Niagara Falls Boulevard marks the boundary between the Town of Amherst and the Town of Tonawanda, and, as a result, the officer was in the Town of Tonawanda – not the Town of Amherst – when traveling in the southbound lanes. At a stop light, he looked at the vehicle next to him,

which was also in the southbound lanes and therefore in the Town of Tonawanda. He saw that the driver was not wearing a seatbelt and the windshield was cracked.

Based on these observations, the officer pulled over the driver for violating the petty offenses of No Seatbelt – Driver (VTL § 1229[c](3)) and Visibility Distorted (Broken Glass)(VTL § 375(22)). The vehicle remained in the southbound lane and thus within the Town of Tonawanda throughout the entire incident. Upon further investigation, the officer also charged the driver with Feloniously Driving While Intoxicated, a class E felony, and Aggravated Unlicensed Operation in the Third Degree, an unclassified misdemeanor.

In seeking dismissal of the indictment, the defendant relied upon the very brief decision of the Appellate Division, Fourth Department, in the case of *People v. Howard*, 115 AD2d 321 (4th Dept. 1985), in which the court determined that “[t]he police officer had no authority to make an investigatory stop or to make an arrest for a traffic violation committed outside of his jurisdiction,” *Howard, supra*, at p. 321. Absent this authority, the defendant argued, all evidence obtained subsequent to the initial stop must be suppressed as “fruit of the poisonous tree.”

The prosecution presented two separate arguments to support the police officer’s actions. The argument that, pursuant to CPL § 140.30, any person may make an arrest for a *felony* (a “citizen’s arrest”) was rejected by the Court because the actions taken by the police officer to obtain the evidence supporting the felony charge (i.e., stopping

the defendant for petty offenses) were performed “as a result of the officer acting in his official capacity as a uniformed police officer,” *Graham, supra*, at p. 531, and not as a private citizen.

The prosecution’s other argument relied upon CPL § 20.50(2), which provides that “[w]here an offense prosecutable in a local criminal court is committed... in a town... but within one hundred yards of any other such political subdivision, it may be prosecuted in either such political subdivision.” As a result, the prosecution noted that because town courts have been given jurisdiction over petty offenses beyond the geographic boundary of the town, it is not reasonable that the town’s law enforcement officers cannot make arrests for such offenses beyond the geographic boundary.

While this argument appears logical, the Court noted that the geographic limitations placed on the authority of police officers by CPL § 140.10[2] were clear, and that “[i]t is not the function of this Court to second guess the wisdom of the Legislature,” *Graham, supra*, at p. 530. The Court ruled that the officer had no authority to arrest the defendant on petty offenses, and that all evidence of misdemeanor or felony offenses derived from the officer’s unauthorized stop of the defendant was “fruit of the poisonous tree.” As a result, the Court dismissed the indictment.

The Erie County District Attorney’s Office has filed a notice of appeal regarding this decision. A date for argument of the appeal has not yet been set.

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: taheri@localnet.com.

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