

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment No. 2014-0299

Defendant.

**APPEARANCES: SANDRA DOORLEY, ESQ.
Monroe County District Attorney
JENNIFER KENNEDY, Esq., Of Counsel
Attorney for People**

**YOUSEF N. TAHA, ESQ.
Attorney for Defendant**

DECISION AND ORDER

VICTORIA M. ARGENTO, J.

The Court issued a Decision and Order dated September 3, 2021, granting defendant's motion to vacate his conviction pursuant to CPL 440. The motion was granted because the People failed to disclose impeachment material pertaining to Rochester Police Officer Ryan Hartley prior to the suppression hearing held in this case on August 19, 2014. Officer Hartley allegedly witnessed defendant commit a traffic infraction which led to his vehicle being stopped by the police. A gun was found in defendant's car which he admitted possessing. After vacating the judgment of conviction the Court ordered a new hearing on defendant's motion to suppress the gun and statements on the grounds that he was illegally stopped by police. The hearing was held on March 17, 2022. Justice Winslow's suppression decision dated November 19, 2014, which denied defendant's motion to suppress, is hereby vacated and superseded by this

Decision and Order.

On February 14, 2014, at approximately 1:00 p.m., RPD Investigator Thomas Luciano and Officer Pike received a radio transmission from Officer Ryan Hartley, who was working a funeral detail, telling them that he had just seen a Dodge Stratus with license plate number EUR2096 commit a traffic infraction and that he believed there could be a gun in the car. Investigator Luciano testified that he did not recall what traffic infraction Officer Hartley claimed to have witnessed and did not know "exactly what information [Hartley] had" in relation to there being a gun in the car. Neither Officer Pike nor Officer Hartley testified at the hearing.

Moments after receiving the radio call, Luciano and Pike spotted the vehicle parked at the curb in front of 59 Farbridge Street in the City of Rochester. They approached on foot and saw defendant seated in the driver's seat with the door open and his feet on the ground. Officer Pike told him to stand up, then he pat-frisked him, which caused defendant to tense up. Pike asked if he had any weapons on him. Defendant said no, but that he had a gun in the console of his car.

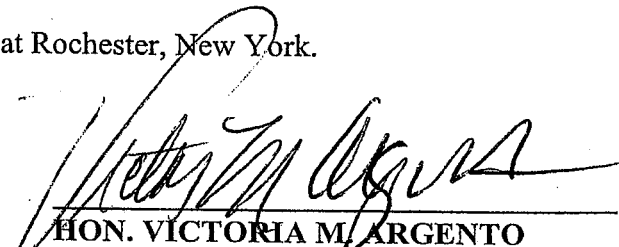
Defendant was handcuffed, placed in a patrol car, and driven to the police station where he was placed in an interview room and questioned by Investigators Seth Carr and Cathy Farina. Meanwhile, a search warrant was obtained for his vehicle and a .38 caliber revolver was found in the car's console. At the police station defendant waived his Miranda rights and told the investigators that he had a .38 caliber revolver in his car for self-defense. After making this admission he asked for a lawyer and questioning about the incident ceased. However, the investigators asked defendant a few additional

questions about unrelated criminal activity, but determined defendant was not a person of interest in those matters.

The People argue that defendant's motion should be denied because Investigator Luciano and Officer Pike stopped defendant based on information they received from a fellow officer. When the People rely on the fellow officer rule to meet their burden at a suppression hearing and the defendant challenges the reliability of the information conveyed, the content of that underlying information must be proven (*People v. Dodt*, 61 NY2d 408, 416 [1984]; *People v. Jenkins*, 47 NY2d 722 [1979]). Here, the People offered no evidence regarding the specifics of the alleged traffic infraction committed by defendant or the basis for Officer Hartley's belief that there may have been a gun in defendant's vehicle. Accordingly, the gun and defendant's admissions – both at the scene and at the police station – must be suppressed as fruits of an unlawful stop. Defendant's motion to suppress is granted and the indictment is dismissed.

This constitutes the Order of the Court.

Dated this 13th day of May, 2022 at Rochester, New York.



HON. VICTORIA M. ARGENTO
SUPREME COURT JUSTICE