

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

839

**KA 18-00690**

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, GREENWOOD, AND NOWAK, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID L. WALKER, DEFENDANT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (GUY A. TALIA OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II,  
OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Judith A. Sinclair, J.), rendered January 17, 2018. The judgment convicted defendant upon a jury verdict of criminal possession of a controlled substance in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the supplemental motion to suppress is granted, the indictment is dismissed, and the matter is remitted to Supreme Court, Monroe County, for proceedings pursuant to CPL 470.45.

Memorandum: On appeal from a judgment convicting him upon a jury verdict of criminal possession of a controlled substance in the second degree (Penal Law § 220.18 [1]), defendant contends that Supreme Court erred in denying his supplemental motion to suppress physical evidence obtained as the result of an unlawful vehicle stop. We agree with defendant.

It is well settled that, although "a defendant who challenges the legality of a search and seizure has the burden of proving illegality, the People are nevertheless put to the burden of going forward to show the legality of the police conduct in the first instance" (*People v Berrios*, 28 NY2d 361, 367 [1971] [internal quotation marks and emphasis omitted]; see *People v Walls*, 37 NY3d 987, 988 [2021]; *People v Dortch*, 186 AD3d 1114, 1115 [4th Dept 2020]). As relevant here, a vehicle stop is permissible when based on probable cause that the driver has committed a traffic violation (see *People v Hinshaw*, 35 NY3d 427, 430 [2020]).

On February 1, 2017, a police officer in a patrol vehicle stopped the vehicle that defendant was driving. At the suppression hearing, the officer testified that he entered the vehicle's plate number in his computer to "r[u]n a DMV check," and "the vehicle came back

suspended" for an insurance lapse. He testified that the computer screen would have displayed "suspension [- - - -] insurance lapse." Defendant, in support of his supplemental motion to suppress, submitted a verification of insurance form showing that the vehicle in question was insured from October 31, 2016, through April 30, 2017, with "no lapse in coverage during this policy period."

Defendant does not dispute that the police may lawfully run a license plate number through a government database to check for outstanding violations, and information indicating that the registration is in violation of the law, such as a suspended registration for an insurance lapse, may provide probable cause for the officer to stop the vehicle (*see People v Bushey*, 29 NY3d 158, 160 [2017]; *People v Coss*, 189 AD3d 1759, 1762 [3d Dept 2020]). We agree with defendant, however, that the People failed to establish the reliability of the information received by the officer. It is well settled that "[a] police officer is entitled to act on the strength of a radio bulletin or a telephone or teletype alert from a fellow officer or department and to assume its reliability" (*People v Lypka*, 36 NY2d 210, 213 [1975]; *see People v Rosario*, 78 NY2d 583, 588 [1991], *cert denied* 502 US 1109 [1992]). "Officers making arrests based on the transmitted information are justified in doing so because the officer or department furnishing that information presumptively possesses the requisite probable cause which justifies the warrantless [action]. However, where a defendant challenges an arresting officer's warrantless action, the presumption of probable cause disappears and it becomes incumbent upon the People to establish that the officer or agency imparting the information, in fact possessed the probable cause to act" (*Rosario*, 78 NY2d at 588; *see People v Landy*, 59 NY2d 369, 375 [1983]).

Here, defendant's submission of the verification of insurance form in support of his supplemental motion was sufficient to challenge the presumed reliability of the information obtained by the officer that the vehicle's registration was suspended due to an insurance lapse (*cf. People v Bryant*, 187 Misc 2d 259, 263-264 [Crim Ct, NY County 2001]). It was therefore incumbent upon the People to submit proof at the suppression hearing in addition to the officer's testimony to establish the reliability of the information received by the officer, and the People failed to meet that burden (*see generally Dortch*, 186 AD3d at 1115; *People v Searight*, 162 AD3d 1633, 1635 [4th Dept 2018]).

Therefore, inasmuch as the People failed to meet their burden of showing the legality of the police conduct in stopping the vehicle in the first instance, we conclude that the court erred in refusing to suppress the physical evidence obtained as a result of the stop (*see People v Suttles*, 214 AD3d 1313, 1314 [4th Dept 2023], *lv denied* 40 NY3d 936 [2023]; *People v Reedy*, 211 AD3d 1629, 1630 [4th Dept 2022]). Because our determination results in the suppression of all evidence supporting the crime charged, the indictment must be dismissed (*see Suttles*, 214 AD3d at 1314; *Reedy*, 211 AD3d at 1630). In light of our

determination, we do not reach defendant's remaining contentions.

Entered: November 17, 2023

Ann Dillon Flynn  
Clerk of the Court