

STATE OF MICHIGAN

IN THE 48TH DISTRICT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Vs.

DISTRICT COURT NO.

SHERYL ANN GOLDEN,

02-20738

_____ /

BEFORE THE HONORABLE KIMBERLY SMALL, DISTRICT JUDGE

BLOOMFIELD HILLS, MICHIGAN

TUESDAY, MARCH 11, 2003

APPEARANCES:

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WITNESSES: PEOPLE

None

WITNESSES: DEFENDANT

None

EXHIBITS:

None

1 Bloomfield Hills, Michigan

2 Tuesday, March 11, 2003

3 THE COURT: Calling the case of People versus
4 Golden, case number 02-20738 and 39.

5 Counsel, would you care to put your
6 appearances on the record?

7 MS. PICCIRILLI: Good afternoon, your Honor.
8 Elisa Piccirilli appearing on behalf of the People.

9 THE COURT: Good afternoon.

10 MR. AMBROSE: Good afternoon. Dan Ambrose, on
11 behalf of Sheryl Golden.

12 THE COURT: And good afternoon to you, Mr.
13 Ambrose. This is the date to argue the motion, correct?

14 MR. AMBROSE: And I've prepared a brief in the
15 matter too, your Honor, with some law. I mean, the law is
16 pretty straightforward. May I approach?

17 THE COURT: You may.

18 MR. AMBROSE: It's basic law, observation
19 period and incorporating some of the facts of which we were
20 fortunate enough to get - I didn't incorporate any facts
21 from yesterday's hearing because it was done before that
22 time, but that really wasn't really relevant to the facts of
23 this case.

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MS. PICCIRILLI: Your Honor, I did receive a copy of that this afternoon, and if the Court would like me to respond, I will.

THE COURT: Well, because I haven't read it either. I don't know if I want a response from you or not. Tell you what, let's do it this way. Why don't you read it and if you would like to respond, then let me know.

MS. PICCIRILLI: Okay.

THE COURT: And I'll give you time to do that. If you're not going to respond, I will ask you also to let me know that so I know to move forward.

MS. PICCIRILLI: Okay.

THE COURT: Okay.

MS. PICCIRILLI: Thank you, your Honor. And I apologize for the delay in getting into your courtroom this afternoon.

(Brief pause in proceedings)

THE COURT: Okay. We're ready to go forward, I assume. Thank you for the apology. I know that you were very busy. All right. Go right ahead.

MR. AMBROSE: Well, I suppose I would argue first?

THE COURT: Yes.

MR. AMBROSE: Well, your Honor, it's been a while since we had our hearing on the evidentiary matters.

1 It's been about four months, but I think the summary of the
2 evidentiary hearing would be that Trooper Huggins knows what
3 time he stopped the defendant at. Other than that, he can't
4 give a time for anything else that he did. He can't give a
5 time for what he arrested her exactly, what time he gave her
6 a preliminary breath test, what time he read the chemical
7 test rights, what time he left the scene. He drove her back
8 to her house, what time they got there, what time they got
9 to the station, nor what time they got into the police
10 department.

11 So really it would all come down to a
12 credibility issue and since he clearly admits that he didn't
13 follow the rules by writing down the observation start time,
14 which is put into the administrative rules so that way we
15 don't have questions with people's watches, was it 15
16 minutes on their watch. Clearly, he didn't bother following
17 that rule at all.

18 So it comes down to a question of his
19 credibility, your Honor, which watching that videotape and
20 listening to him testify again on that same thing, you know,
21 to me, it's mind blowing that somebody could watch a video,
22 which at one position clearly there's four people standing
23 in that person's way. The person's in a jail cell and say
24 that he can observe him for purposes of doing an observation
25 period. If that's an observation period to him, your Honor,

1 there's no way that that can conform with the law, of an
2 observation period.

3 And for him to sit there and tell you, under
4 oath, that he's observing that person, watching them. For
5 the first - you know, I was kind of surprised, quite
6 frankly, when he said that he couldn't hear inside there if
7 the defendant belched or regurgitated or anything because in
8 the evidence you're hearing in front of Judge Gilbert, under
9 oath, he testified that he could hear inside that - into
10 that jail holding cell and that, in fact, there wasn't any
11 burping or conversation going on.

12 THE COURT: Is that Schwartz matter in front
13 of Judge Gilbert?

14 MR. AMBROSE: Yes, your Honor. I have a
15 transcript right here.

16 THE COURT: Has Ms. Piccirilli seen that
17 transcript?

18 MR. AMBROSE: I don't know. It's with her
19 office.

20 MS. PICCIRILLI: I have not, your Honor.

21 THE COURT: All right. Fair enough. Go
22 ahead.

23 MR. AMBROSE: What did she say, your Honor?

24 MS. PICCIRILLI: I have not seen that, your
25 Honor.

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MR. AMBROSE: Oh. Well, it'd be on page 60, line 8, where he makes this contradictory statement to what he testified to yesterday. But that's a problem with Trooper Huggins, your Honor, is that the truth is whatever he thinks comes out of his mouth. It doesn't really matter what evidence is there. And the fact that he can sit there and lie under oath and says everything it needs to say about his credibility for the 15-minute observation period.

Clearly, there's nobody could see where that defendant, where Andrew Schwartz was. And as a matter of fact, in that hearing, your Honor, when I asked him if he could tell where Andrew Schwartz was in his cell, he said, no, and that's on page 61, he said he couldn't tell where he was in his cell because that was the truth. Yesterday, he told you he was on the right side of it because he thought maybe that would be a better position for him to see it.

Your Honor, Trooper Huggins will do whatever he needs to do to win his case and he thinks that because he's a state trooper, everybody's going to believe him. But he cannot be allowed to testify contradictory to objective evidence and get away with it.

His credibility is what's at issue here, your Honor. He didn't follow the rules to protect Sherry Golden from the - you know, the rule is you've got to do a 15-minute observation period. All he could say is that's his

1 normal habit to do it that. Other than that, there's no
2 other objective evidence that the prosecution has presented.
3 Well, there is no objective evidence. It's all him and his
4 partner saying, well, this is the way we always do it so I
5 assume it's done this way.

6 That observation period, and looking again at
7 that tape, your Honor, he's inclined to lie if it helps him.
8 And again, it says everything about his credibility.
9 There's no way that - I mean, that I guess in my opinion,
10 this Court cannot find that, you know, with evidence of that
11 videotape and what it says about his credibility, that he
12 followed the rules in this case and the 15-minute
13 observation period, which is mandatory and, therefore, the
14 test should be suppressed. And if I have the law and the
15 briefs, I don't need to state that, your Honor.

16 THE COURT: Ms. Piccirilli?

17 Thank you, Mr. Ambrose.

18 MS. PICCIRILLI: Your Honor, in defendant's
19 motion, he makes five challenges to this case. Would you
20 like me to address all five of those challenges or just the
21 ones he argued on oral argument?

22 THE COURT: Mr. Ambrose, are you abandoning
23 any of them?

24 MR. AMBROSE: The only one I would be really
25 arguing at this point would be - well, again, the probable

1 cause to stop would all be based on his credibility and so
2 I suppose that issue and the breath test, I think - it's
3 mainly about the breath test, but when he puts his
4 credibility into issue like he has in this case, I would
5 argue that it's hard to believe anything that comes out of
6 that particular individual's mouth.

7 THE COURT: Ms. Piccirilli, I think the answer
8 is two of the five. The other three are abandoned.

9 MS. PICCIRILLI: Thank you, your Honor. Then
10 in regard to the first challenge, no probable cause to stop
11 or detain the defendant, Trooper Huggins testified that on
12 the date of the incident, he observed a car traveling in two
13 lanes, the vehicle change lanes abruptly, and made a quick
14 right turn. No flasher was used and the car swerved away
15 and back towards the center lane.

16 Trooper Stewart, although he did not observe
17 everything during the stop, he observed the abrupt lane
18 change and abrupt right turn on that date in question. So
19 as for a probable cause to stop, the People assert that that
20 is sufficient probable cause to stop the defendant on the
21 date of the incident.

22 In regard to the DataMaster rules being
23 violated, defendant points out that the 15-minute rule was
24 not observed. The administrative rules do provide that a
25 subject must be observed for 15 minutes prior to the

1 DataMaster being administered. The testimony that came out
2 in this case is that the stop occurred at 11:50 p.m. on
3 August 20th, of 2002. The DataMaster ticket reflects that
4 the first sample was given at 12:49 and that the second
5 sample was given at 12:50 a.m.

6 Trooper Huggins testified that the defendant
7 was in his presence during that entire period of time and
8 that he was watching her. He testified that the time
9 between the arrest and the arrival at the Oakland County
10 Jail was between 15 and 20 minutes and that in addition
11 while she was at the Oakland County Jail, that he did
12 observe her for a 15-minute period.

13 During that time, she was in the trooper's
14 presence. Nothing was placed in her mouth. She did not
15 regurgitate or belch. And in addition prior to her blowing
16 into the instrument, he checked her mouth to make sure there
17 was nothing there. He did testify specifically that he is
18 certain that he observed her for 15 minutes because he
19 looked at the clock.

20 It is apparent that there is an issue that he
21 did not write down the exact time. However, technical
22 violations of the administrative rules do not necessarily
23 result in a suppression of the DataMaster results. It's
24 only when those violations call into question the accuracy
25 of the DataMaster as administered.

1 The People would assert that the defendant
2 was in Trooper Huggins presence during that entire time. He
3 did not observe her vomit, belch, regurgitate, did not
4 observe her place anything in her mouth.

5 The defendant also brings up another case,
6 People versus Schwartz, in which Trooper Huggins testified
7 in that case that he did observe that subject for 15
8 minutes. We watched the video yesterday and it does appear
9 that there are people in front of the cell; however, Trooper
10 Huggins simply testified that he was able to see into that
11 cell. I would assert to the Court that without physically
12 viewing that room ourselves, I have never seen that room,
13 but the Trooper testified that he was no more than 10 feet
14 away from that subject.

15 Certainly, the Court may want to consider that
16 in judging the credibility of Trooper Huggins, but the facts
17 in this case are significantly different. The defendant in
18 this case was observed at the Oakland County Jail. The
19 Oakland County Jail setup is significantly different from
20 the Oak Park setup. There is no video of that as I
21 understand so there is no way to really verify where Ms.
22 Golden was at that time based on a video, however, Trooper
23 Huggins testified that he did observe her.

24 As far as Trooper Huggins' credibility,
25 Trooper Huggins never dodged the fact that that's what he

1 did. He quite candidly stated he placed Defendant Schwartz
2 in that cell and observed him during that time. I find it
3 very interesting that Mr. Ambrose brings up the
4 discrepancies in Trooper Huggins' testimony during oral
5 argument and did not confront him with them yesterday so
6 that Trooper Huggins could explain if there was a
7 discrepancy. I have not seen that transcript. I don't know
8 exactly what follows or is prior to that testimony.

9 I would ask this Court to find that the
10 DataMaster rules were not violated, that the administrative
11 rules do not require the person to be sitting a certain
12 number of feet away. And, in fact, the DataMaster
13 administrative rules do not require that the Trooper be
14 constantly fixated on that subject. A brief period of
15 looking away or inattention is okay, under the rules
16 according to the case law, and I will provide that to the
17 Court if the Court finds that necessary.

18 Based on those arguments, I would ask that the
19 Court find that there is probable cause to stop or detain
20 the defendant and that the DataMaster rules were not
21 violated.

22 THE COURT: All right. Thank you very much.
23 Anything further, Mr. Ambrose?

24 MR. AMBROSE: Just a couple things, your
25 Honor. As far as the stop goes, isn't it amazing that the

1 only thing that Stewart saw was a supposedly abrupt turn
2 onto Opdyke. I'm not familiar with any part of the - any
3 law that says you have to make turn in a certain fashion or,
4 you know, it's not proper. But he certainly couldn't
5 testify whether she used her turn signal or not.

6 Further, your Honor, Trooper Huggins is
7 willing to, you know, lie or exaggerate on one case to save
8 a breath test. I think it could clearly be inferred he's
9 willing to lie in order to protect his evidence no matter
10 what. I mean, if he would said, you know what, I didn't do
11 the breath test correctly here. I should have done it
12 properly, but I didn't, that'd be a whole another case, but
13 that's not what he did, your Honor. And, of course, that
14 case is still pending so he still has everything to lose by
15 telling the truth in that case. He could say, you know, I
16 made a mistake and I can totally picture Trooper Huggins
17 doing that, but your Honor, he's not a -- well, the video
18 tape and his testimony, I guess, speaks for itself. There's
19 nothing more I can say about it.

20 THE COURT: All right. The Court will stand
21 in recess for just a moment.

22 (Recess)

23 THE COURT: Recalling the case of People
24 versus Golden. All right. This Court has had the benefit
25 of numerous witnesses during this protracted hearing period,

1 in addition to the video tape of the People versus Schwartz
2 matter, which is pending in circuit court in front of Judge
3 Gilbert, in addition to arguments by counsel.

4 And, Mr. Ambrose, you did a nice job in
5 setting forth the law in this case. I'm not going to go
6 through that much of it. We're all aware of what the law
7 is. I'll, of course, just hit the real highlights.

8 It is the People's burden to lay a foundation
9 for the admissibility of a Breathalyzer test and I'm going
10 to - let me go back and first take up the stop. That was an
11 issue, while be it not the one we focused on for most of the
12 period, still an issue. The testimony has already been laid
13 out in argument and the credibility of Trooper Huggins, I
14 will get to in a few moments, but put that aside for a
15 moment. Officer Stewart, excuse me, Trooper Stewart's
16 testimony does substantiate Trooper Huggins' testimony so
17 based on Trooper Stewart's testimony of seeing abrupt change
18 in lanes, along with Trooper Huggins' testimony about her
19 driving that evening, I will find there is probable cause on
20 this record to have made the stop.

21 Now, having moved on, let's go on to the more
22 serious issue of the Breathalyzer. It is, as I began to
23 say, it's the prosecutor's burden to lay a foundation. If
24 the prosecutor failed to do that, the breathalyzer is
25 suppressed and the case law, we all know is very clear, the

1 prosecutor has to first show that the operator's qualified,
2 I'll find based on the Trooper's testimony, his
3 qualifications, certainly that's been met.

4 Next, proper method of procedure must be shown
5 as having been followed in administering the test. The test
6 must be shown to have been performed within a reasonable
7 time after the arrest and the testing device must be shown
8 to have been reliable. Obviously, the issue in this case is
9 number two, the proper method and procedure must be shown as
10 being followed in administering the test. The requirement
11 under the administrative rules is that the defendant be
12 observed for a 15-minute period prior to administering the
13 breath test.

14 The defendant, of course, -- the whole
15 rationale of the 15-minute observation period is for the
16 Trooper, officer, whoever is administering the test to make
17 the defendant doesn't smoke, regurgitate, place anything in
18 his or her mouth, anything that could affect the test.

19 And in this case, what I have is this. I have
20 a trooper who's testified that he's sure that he observed
21 this defendant for a period of 15 minutes because that's
22 what he always does. There is no log time, start log time
23 that was recorded. He did indicate when, in fact, the car
24 was stopped and a whole bunch of other times, what I have is

1 the trooper's testimony that this is how he always does it.
2 And he knows that he observed for 15 minutes.

3 Mr. Ambrose, rightly so, came forth and
4 requested and asked the trooper some questions about how he
5 always does it. Armed with some ammunition and, frankly,
6 some darn good ammunition, Mr. Ambrose came forward and put
7 this trooper's credibility at issue. Credibility is always
8 an issue. The Court looked at the video tape of the
9 Schwartz matter and, frankly, was stunned that the trooper
10 could stand there and indicate, based on what I saw from
11 that tape, that he, in fact, could see Mr. Schwartz for at
12 least a period of 15 minutes. I think the total number he
13 indicated was some 27 minutes.

14 I don't know if we were looking at the same
15 tape. The tape that I saw was a cell where the trooper was
16 probably about maybe 10 feet away, maybe eight feet away,
17 somewhere in between, eight to 10 feet away from the cell, a
18 cell where sometimes there was one person standing in front
19 of it, sometimes there were two people standing in front of
20 it, sometimes there were three people standing in front of
21 it. In fact, at one point, somebody even opened up their
22 coat, a rather large individual, opened up their coat,
23 flailing it from side to side, which blocked even more of
24 the cell. And the trooper even looking at this, indicated
25 that at all times he could observe Defendant Schwartz.

1 Now, he also -- there were also a couple of
2 other times where the trooper's head could be seen in the
3 video screen. Not often could we see, but there were times
4 that we could and, frankly, many of the times the trooper's
5 head was turned to the side so unless he had eyes on the
6 side of his head, I don't know how he possibly could have
7 observed that particular defendant.

8 This trooper's credibility is certainly called
9 into question. If this is the way that he observes a
10 defendant, then this Court has absolutely - and if he's done
11 in that case same that he's done in this case, there's no
12 way this Court can let this Breathalyzer stand.

13 Now, the prosecutor argues, Judge, you're not
14 suppose to extrapolate that he did it in one case so he did
15 it in another. And that's a darn good argument. She
16 indicates that even the setup, of course, of the observation
17 period was very different. He didn't observe him at the
18 Oakland County substation. He observed him at the Oakland
19 County Jail, very different place, very different
20 observation. But I will go back to the credibility of the
21 trooper. It is the prosecution's burden to show that a 15-
22 minute observation period was, in fact, observed and this
23 Court finds no credible evidence on this record to support
24 that. So I will suppress the Breathalyzer.

25 MR. AMBROSE: Thank you.

1 THE COURT: Which, of course, leaves the
2 case viable and the question becomes what are we doing from
3 this point.

4 MR. AMBROSE: I have a feeling we'll be going
5 to a trial, your Honor, so if we could just get a court date
6 out there.

7 THE COURT: Fair enough. Jury trial or bench
8 trial?

9 MR. AMBROSE: It'll be a jury trial, your
10 Honor.

11 THE COURT: Fair enough.

12 Ms. Piccirilli, do you have any questions?

13 MS. PICCIRILLI: None, your Honor.

14 THE COURT: All right.

15 MR. AMBROSE: Thank you.

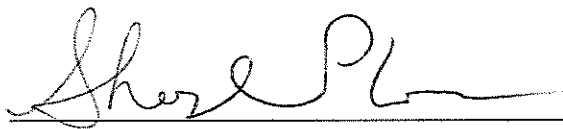
16 MS. PICCIRILLI: Thank you.

17 (Proceedings concluded)

1 STATE OF MICHIGAN)

2 COUNTY OF OAKLAND)

3 I certify that this transcript, consisting of 19
4 pages is a complete, true, and correct transcript of the
5 proceedings and testimony taken in this case on Tuesday,
6 March 11, 2003, before the Honorable Kimberly Small,
7 District Judge.

8 
9

10 Sheryl Ploch, CER 5825

11 4280 Telegraph Road

12 Bloomfield Hills, Michigan 48302

13 April 24, 2003
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