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No. 52
The People &c., Appellant,
v.
Andrew H. Van Buren Respondent.

No. 53
The People &c., Appellant,
v.
Mary B. Jeanniton, Respondent.

John Hubbard, for appellant.
Andrew H. Van Buren, pro se, respondent.
Terence P. O'Leary, for respondent Mary B. Jeanniton.
Linda A. Geary, for City of New York, amicus curiae.
City of New York; Eliot Spitzer, Attorney General of the
State of New York; Coalition of Watershed Towns, amici curiae.

GRAFFEO, J.:

We are asked in this case whether the New York City
Department of Environmental Protection (DEP) Water Supply Police
are authorized to enforce traffic laws within the City watershed.
Based on the statutes underlying their authority as police

officers, we reverse the dismissal of the simplified traffic informations at issue.

I.

By the end of the 19th century, the State Legislature and the City of New York recognized the need to insure an adequate and safe supply of water for an ever-growing City population. In furtherance of this purpose, in 1905 the City was granted eminent domain powers over areas outside the City in order to create new reservoirs and build water supply facilities (see L 1905, ch 724). Due to the magnitude of construction contemplated and the large labor force needed to work on the project, the Legislature mandated that the New York City Board of Water Supply:

"provide proper police protection to the inhabitants of the localities in which any work may be constructed under the authority of this act and during the period of construction, against the acts or omissions of persons employed on such works or found in the neighborhood thereof; and to that end the said board is hereby authorized and required to appoint a sufficient number of persons to adequately police the said localities for the said periods" (L 1906, ch 314, § 6).

The members of this policing force were issued certificates of appointment that were provided to the sheriffs of the counties where the officers operated (id.).¹

¹Using substantially the same language, the 1906 Act was codified in the New York City Code (see NY City Administrative Code § 24-355).

Once the water facilities were substantially completed and the work camps closed, the need for watershed police, as contemplated by the 1906 Act, subsided. Instead, the focus of their responsibilities switched to protecting the reservoirs and watershed lands from pollution, and to providing security for the new facilities. The Legislature eventually decided that permanent protection of the City's infrastructure was necessary, but that the cost of such protection would be borne by the City. In 1937, the Legislature imposed upon the Commissioner of the NYCDEP "the duty . . . to preserve the purity of all waters from which any part of the city water supply is drawn, and to protect such supply and the lands adjacent thereto from injury or nuisance [and] preserve . . . all other property connected with the water supply" (L 1937, ch 929, § 734 [1]-1.0).

Despite the fact that for many years the Legislature had recognized the authority of the City to maintain a water supply protection force (see L 1983, ch 969; Mem of Assembly in Support, Bill Jacket, L 1983, ch 969; Budget Report, Bill Jacket, L 1983, ch 969; Sponsor's Mem, Bill Jacket, L 1983, ch 969), the members of that force were not expressly designated "police officers" as defined in the Criminal Procedure Law. But in 1983 the Legislature conferred police officer status on DEP officers by including them in CPL 1.20 (34), the statute that lists the groups of persons that constitute police officers in New York (see L 1983, ch 969). This provision vested DEP police with

jurisdiction over areas outside of the City in order "to protect the sources, works, and transmission of water supplied to the city of New York, and to protect persons on or in the vicinity of such water sources" (CPL former 1.20 [34] [o]). The DEP police were thus charged with "enhancing the enforcement and prosecution of violators of the laws which protect the City's water supply" (Mem of Mayor of City of New York, Bill Jacket, L 1983, ch 969).²

According to the City, the DEP Commissioner currently employs a departmental force of approximately 170 officers who are engaged in law enforcement activities. Over nine million people in New York City and surrounding communities rely on the New York City Watershed system as their primary source of potable water. As the largest surface water supply in the United States, the City's three watershed resources -- the Croton, Delaware and Catskill watersheds -- span an area of almost 2000 square miles in eight upstate New York counties. The watershed includes 19 reservoirs and three controlled lakes, in addition to an extensive aqueduct system, and water control and treatment facilities.³

²A subsequent amendment expanded the jurisdiction of the DEP police to encompass areas within New York City and to the protection of individuals "in the vicinity of" the City's water sources and facilities (CPL 1.20 [34] [o]; see L 2000, ch 599).

³ For the history of the development of the New York City water supply, see Miele, An Enormous Amount of Work to be Done: Protecting the New York City Watershed, 12 Fordham Env'tl L J 467 (2001) and Finnegan, New York City's Watershed Agreement: A Lesson in Sharing Responsibility, 14 Pace Env'tl L Rev 577 (Summer

II.

In January 2003, DEP police officers issued speeding tickets to defendants Mary Jeanniton and Andrew Van Buren, returnable in Hamden Town Court in Delaware County. Defendants separately moved to dismiss their respective uniform traffic informations on several grounds. They argued that the alleged speeding infractions occurred outside the geographical jurisdiction of the DEP police, which defendants maintained was limited to City-owned property within the watershed. Defendants also contended that DEP had failed to comply with the requirements of its 1906 enabling legislation and that enforcement of the Vehicle & Traffic Law was inconsistent with the mission of the DEP -- to protect New York City's water supply. Finally, they claimed that the Municipal Home Rule law prohibited such DEP law enforcement action without the consent of local government.

The Town of Hamden Justice Court dismissed both tickets and Delaware County Court affirmed. County Court reasoned that the 1906 legislation and related departmental regulations authorized DEP police functions only during the construction of water supply facilities, which concededly was not occurring at the time the tickets were issued. The court also concluded that DEP had violated the Municipal Home Rule law by engaging in law enforcement activities absent the consent of the Town of Hamden.

1997).

A Judge of this Court granted leave to appeal and we now reverse.

III.

As relevant here, a police officer is generally authorized to arrest an individual for a petty offense, which includes a traffic violation (see Vehicle and Traffic Law § 155), when: (1) "there is reasonable cause to believe that such person has committed such offense in [the officer's] presence" (CPL 140.10 [1] [a]); (2) "[s]uch offense was committed or believed by [the officer] to have been committed within the geographical area of such officer's employment or within one hundred yards of such geographical area" (CPL 140.10 [2] [a]); and (3) "[s]uch arrest is made in the county which such offense was committed or believed to have been committed or in an adjoining county" (CPL 140.10 [1] [b]).

It is undisputed in this case that the DEP police officers had reasonable cause to believe that defendants violated the Vehicle and Traffic Law by speeding and that they were apprehended in the county where the alleged infractions occurred. It is also clear that the DEP officers were on patrol in their geographical jurisdiction, which encompasses all of the land within the "watershed" (Rules of City of NY Dept of Env'tl Protection [15 RCNY] § 18-16 [114]) as demarcated on the relevant official maps (see Rules of City of NY Dept of Env'tl Protection [15 RCNY] § 18-A.1 [a], [b]). This watershed area includes most of the Town of Hamden (see id., § 18-A.1 [b]) and defendants

concede that the alleged traffic infractions occurred within the boundaries of the watershed. The DEP officers were therefore authorized as police officers under CPL 140.10 to stop defendants for speeding infractions.

Defendants' claim that DEP police should be restricted to law enforcement activities related specifically to the protection of water facilities or a direct water source (a lake or reservoir, for example) is inconsistent with the express delegation of police power to this force under the Criminal Procedure Law (see CPL 1.20 [34] [o]). Aside from the relevant provisions of the Criminal Procedure Law, the DEP Commissioner is statutorily empowered to protect New York City's potable water supply throughout the region of the watershed (see Public Health Law § 1100 et seq.), an authority that is similarly reflected in state regulations (see 10 NYCRR 128-1.1), the New York City Charter (see NY City Charter § 1400 et seq.), the City Administrative Code (see Administrative Code of City of NY § 24-302) and the Rules of the City of New York (see Rules of City of NY Dept of Env'tl Protection [15 RCNY] § 18-11 [a]).

Protection of that water supply cannot be accomplished by guarding lakes and reservoirs alone since watershed lands are "water sources" (CPL 1.20 [34] [o]) that the DEP police are required to protect (see e.g. Rules of City of NY Dept of Env'tl Protection [15 RCNY] § 18-16 [30]). A DEP officer who observes a motorist traveling at high speed in excess of posted limits could

be justifiably concerned that the driver poses a danger to the watershed because of the increased probability of an accident that could cause a "[p]etroleum product" (id., § 18-16 [78]) or other pollutants to be discharged onto watershed lands, which would seep into groundwater or flow toward a water supply site. And, aside from protecting the watershed itself, the Legislature has authorized the DEP police "to protect persons" who are within or in the vicinity of the watershed (CPL 1.20 [34] [o]). This authority includes enforcing the Vehicle and Traffic Law, violations of which necessarily create a danger to the driver of an automobile, passengers and other members of the public.

Despite the broad police powers vested in the DEP force, the DEP properly recognizes that its mission does not necessarily demand that it be in the business of setting "speed traps" merely for the sake of enforcing the Vehicle and Traffic Law -- a function better left to local law enforcement agencies. The enormous expanse of the region that DEP police must patrol, the breadth of their responsibilities associated with guarding the watershed resources and transmission facilities, and the fact that they are funded by New York City, all indicate the need for administrative oversight regarding the efficient and appropriate deployment of DEP resources. As one DEP administrator has noted

"The primary mission of this Department is to safeguard the drinking water of the City of New York. Enforcement efforts are focused to protect the sources, works and transmissions of the New York City Water Supply System.

"As law enforcement professionals, threats to the environment, threats to NYC property and threats to security of facilities, works and transmissions is our primary focus. Officers will focus on enforcement efforts directly related to our mission. The enforcement of vehicle and traffic law violations, except in extenuating circumstances, undermines our ability to meet our Department mission."⁴

Although the issuance of speeding tickets is not a core function of the DEP force, as police officers with full authority to protect the public within the City watershed, it cannot be said that the officers in this case acted in excess of their jurisdiction.⁵ We therefore conclude that the simplified traffic informations should not have been dismissed.

We also reject defendants' argument that DEP police are prohibited from patrolling the watershed by the Municipal Home Rule law. The right of a "local government[]" to administer its

⁴ See also Miele, An Enormous Amount of Work to be Done: Protecting the New York City Watershed, 12 Fordham Env'tl L J at 485 (quoting DEP Commissioner, responding to a question about DEP police conducting traffic stops, as stating "when they step out of the environmental end, it is because they see a danger. Now, if they see someone drunk driving . . . we are not going to ignore it. We are not going to go out of our way to go after it, but that is how our police get involved in less than environmental issues").

⁵ Nor do we agree with the courts below that the DEP police are limited to actions covered by chapter 314 of the laws of 1906. Subsequent legislative enactments have expanded the jurisdiction of the DEP force beyond providing protection only during the construction of water facilities (see CPL 1.20 [34] [o]; Mem of Mayor of City of New York, Bill Jacket, L 2000, ch 599; L 1983, ch 969; L 1937, ch 929, § 734 [1]-1.0).

own affairs and enact "local legislation" affecting its "property, affairs or government" is enshrined in article IX of the State Constitution (NY Const, art IX, § 2 [b] [1], [2]). Section three of article IX provides, however, that "nothing in this article shall restrict or impair any power of the legislature in relation to . . . [m]atters other than the property, affairs or government of a local government" (id., art IX, § 3 [a] [3]) In the precarious balance between State and local powers, one definitive principle has emerged: "that a proper concern of the State may also touch upon local concerns does not mean that the State may not freely legislate with respect to such concerns" (Wambat Realty Corp. v State of New York, 41 NY2d 490, 494 [1977]). Hence, we have recognized that the protection of the public water supply is integral to the public health and welfare and, consequently, a matter of sufficient concern to the State to exclude it from the strictures of the municipal home rule law (see Matter of Town of Islip v Cuomo, 64 NY2d 50, 57 [1984]; Matter of City of Utica v Water Pollution Control Bd., 5 NY2d 164, 168 [1959]; see also Board of Supervisors of Ontario County v Water Power & Control Commn., 255 NY 531 [1930], affg 227 App Div 345 [3d Dept 1929]). The same holds true for the vital watersheds that supply water to New York City.

Accordingly, in each case, the order of County Court should be reversed and the simplified traffic information

reinstated.

KAYE, Chief Judge (dissenting):

I agree with the majority that the geographical jurisdiction of DEP officers encompasses all of the land within the watershed (Rules of City of NY Dept of Env'tl Protection [15 RCNY] § 18-16 [114]) as set forth on the relevant official maps (see Rules of City of NY Dept of Env'tl Protection [15 RCNY] § 18-A.1 [a], [b]). I cannot agree, however, that, under CPL 1.20 (34) (o), the New York City Department of Environmental Police had authority to hunt out speeders and issue traffic tickets. CPL 1.20 (34) (o) vests the DEP police with jurisdiction over land within the watershed only when acting "to protect the sources, works, and transmission of water supplied to the city of New York, and to protect persons on or in the vicinity of such water sources." The DEP police are trusted with "enhancing the enforcement and prosecution of violators of the laws which protect the City's water supply" (L 1983, ch 969, Statement of Mayor of City of New York in Support, Bill Jacket at 34).

Subsection (o) is specific and discrete. It does not vest DEP officers with authority to apprehend speeders, unless such enforcement is related to protecting the watershed or the

City's facilities, or an individual near a water source or facility. The People make no such showing here.

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R. S. Smith, J. (dissenting):

I dissent because I accept defendants' argument, rejected by the majority in its footnote 5, that the only statutory authorization for the police force now called the "DEP police" is contained in a 1906 enactment that became obsolete long ago.

The 1906 statute, now codified as New York City Administrative Code § 24-355, provides in relevant part:

"it shall be the duty of the board of water supply of the city of New York, to provide proper police protection to the inhabitants of the localities in which any work may be constructed under the authority of this act [L 1905, ch 724] and during the period of construction, against the acts or omissions of persons employed on such works or found in the neighborhood thereof; and to that end the said board is hereby authorized and required to appoint a sufficient number of persons to adequately police the said localities for the said periods. . . . The said board shall give to each person so appointed a certificate of appointment and certified copies thereof, one of which shall be filed in the office of the sheriff of each county in which any work shall be in process of construction under this act and in which said person shall be authorized to perform his duties. Each of said persons so appointed shall be and have all the powers of a peace officer in the county where any work is being constructed under the authority of this act. . . . The sheriff of a county wherein a certificate of appointment of any such person as a peace officer is filed may cancel such certificate for cause, and shall immediately give notice in writing of such cancellation to the board

of water supply of the city of New York, specifying the cause of such revocation. . . . On such cancellation the authority of such person as a peace officer shall immediately cease."

Thus the original authorization was only for the period of construction of water supply facilities, and required that certificates of appointment be filed with the sheriff of each affected county, who could cancel any certificate "for cause." It is undisputed that the construction has been complete for many decades, and that no certificates of appointment are on file.

There has never been another statutory authorization. None of the three statutes cited by the majority in its footnote 5 authorizes the employment of New York City police in the watershed area. As to two of them, no argument is or can be made that they authorize anything of the kind. Chapter 929 of the Laws of 1937, quoted by the majority (opinion at 3), provides that what is now the DEP shall "preserve the purity of . . . waters . . . and . . . protect [the water] supply and the lands adjacent thereto from injury or nuisance." It makes no mention of a police force. Chapter 594 of the Laws of 2000 amended Criminal Procedure Law § 1.20 (34) (o) in a way not relevant here.

Indeed, it is undisputed that, from whenever construction of the "works" referred to in the 1906 act was finished until 1983, no statutory authorization for what is now called the DEP police existed. The force created in 1906

continued to function, and I have no doubt that the people who served on it were -- as the DEP police still are -- performing important public duties in complete good faith. Legally, however, when they acted outside New York City they were civilians; they had no authority to act as police officers.

The People argue here that the force was effectively revived in 1983, when a section referring to "the water-supply police employed by the city of New York" was added to the definition of "police officer" in the Criminal Procedure Law. The new section, CPL § 1.20 (34) (o) included within the definition:

"A sworn officer of the water-supply police employed by the city of New York and acting outside said city, appointed to protect the sources, works, and transmission of water supplied to the city of New York and to protect persons on or in the vicinity of such water sources."

I think it is plain from the text of the statute and its legislative history, however, that the 1983 Legislature did not think it was either creating a new police force or reviving an old one; it was only giving "police officer" status to members of a force that it believed -- mistakenly -- already existed.

On its face, the statute merely defines a term. It does not purport to create a police force. It specifies the category, "police officer" rather than "peace officer" or something else, to which members of a certain force shall belong -- a force that, the Legislature wrongly assumed, was already in

existence. The legislative history makes even clearer that the Legislature did not think it was authorizing a police force. The Assembly memorandum in support of the legislation says:

"this bill would clarify that a sworn officer of the Water-Supply police employed by the City of New York and acting outside New York City [is] a police officer having been so designated in 1905 but inadvertently omitted from the peace-officer 1980 recodification provisions of the CPL (NY Assembly Memorandum in support of Assembly Bill 5782-A of 1983)."

(Emphasis added.)

I think the majority -- for understandable reasons -- is reading the 1983 legislation as though it were sufficient to make the Legislature's mistaken assumption come true -- i.e., to do what the Legislature probably would and should have done, if it had been correctly informed. I sympathize with the majority's wish to accomplish a common-sense result, and if this case involved something other than the authorization of a police force -- if the public employees involved were, say, lawyers or bus drivers -- I might be prepared to go along. But I am unwilling to hold that some citizens have become police, with the power to use force to deprive other citizens of their liberty, until and unless the Legislature has unmistakably expressed an intention to confer that power on them. I would thus hold that the gap in the law that these cases have brought to light can be repaired only by new legislation.

I agree with the courts below that there was no statute

permitting the officers who issued the speeding tickets in these cases to act as police officers in the watershed, and I would therefore affirm the dismissal of the simplified traffic informations.

* * * * *

In each case: Order reversed and simplified traffic information reinstated. Opinion by Judge Graffeo. Judges G.B. Smith, Ciparick and Read concur. Chief Judge Kaye dissents in an opinion. Judge R.S. Smith dissents and votes to affirm in an opinion in which Judge Rosenblatt concurs.

Decided May 10, 2005