CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

CERTIFICATE OF DISPOSITION
NUMBER: 126080

THE PEOPLE OF THE STATE OF NEW YORK
VS

ONUORAH, ANTHONY
Defendant

[redacted]
Date of Birth

[redacted]
Address

NYSID Number

City State Zip

07/30/2012
Date of Arrest/Issue

Docket Number: 2012QN040877

Summons No:

VTL 1163.C VTL 1192.1
Arraignment Charges

Case Disposition Information:

Date	Court Action	Judge	Part
10/31/2013	ACQUITTED AND SEALED	ZOLL,J	JP1

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN THIS COURT.

YU,S
COURT OFFICIAL SIGNATURE AND SEAL

11/08/2013
DATE

FEE: 10.00

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

CRIMINAL COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM, PART JP1
----------X
THE PEOPLE OF THE STATE OF NEW YORK,

Docket No.
2012QN040877

-against-

Continued Bench Trial

ANTHONY ONUORAH,

Defendant.
----------X

October 31, 2013

Queens Criminal Court
125-01 Queens Boulevard
Kew Gardens, New York 11415

B E F O R E :
John Zoll,
Justice, Criminal Court

A P P E A R A N C E S :

For the People:

OFFICE OF RICHARD A. BROWN, ESQ.
District Attorney, Queens County,
BY: Taylor Piscionere, ESQ.
Assistant District Attorney

For the Defendant:

Lalik J. Jain, ESQ.
6122 Booth Street
Rego Park, New York 11374

Clarifications by Lalit K Jain Esq as correct name. See also "Lalik Jain" on page 2, line 4.

Angela Moody
Criminal Court Reporter

Proceeding

COURT OFFICER: Continued bench trial, Anthony Onuorah.

THE COURT: Appearances on the record.

MR. JAIN: Lalik Jain, attorney for the Defendant. 6122 Booth Street Rego Park, New York 11374.

THE COURT: Spell your last name J-A-I-N.

MS. PISCIONERE: Taylor Piscionere for the People.

THE COURT: Ms. Piscionere, how are you? This matter is on for trial and violation of 1163(a) of the Vehicle and Traffic Law. Are People ready?

MS. PISCIONERE: People are ready, Judge.

THE COURT: Is Defense ready?

MR. JAIN: Yes.

THE COURT: People, call your first witness.

MS. PISCIONERE: People call Anthony Canale to the stand.

COURT OFFICER: Witness entering, Your Honor.

(Whereupon the witness enters the courtroom.)

COURT OFFICER: Step up, raise your right hand. Do you swear or affirm the testimony you are about to give is the truth, whole truth, nothing but the truth?

THE WITNESS: I do.

COURT OFFICER: Please, in a loud, clear voice state your name, shield and command.

THE WITNESS: Officer Anthony Canale 15509, 113th

Precinct.

COURT OFFICER: Have a seat and speak into the microphone.

THE COURT: Officer Canale keep your voice up. If you hear the word "objection" stop testifying and wait for further clarification whether you should continue or stop testifying all together to that question.

If you have any documents, please don't read from anything that is not in evidence. If you do not recall the answer to a specific question, that's fine. Just tell us that you don't remember, and if there is something that would refresh your recollection, please let us know that and let us know what it is that would refresh your recollection.

A N T H O N Y C A N A L E, having been duly called as a witness on behalf of the People of the State of New York first having been first duly sworn testified as follows:

DIRECT EXAMINATION BY MS. PISCIONERE:

Q By whom are you employed, Officer Canale?

A New York City Police Department.

Q And in what capacity?

A I'm a police officer.

THE COURT: Where are you currently assigned?

THE WITNESS: 113th Precinct.

Q And how long have you been at your current assignment?

A Five and a half years.

Q How many years have you been a police officer?

A Approximately, six and a half years.

Q In those six and a half years, how many traffic stops have you made?

A Hundreds.

Q I am going to direct your attention now to July 30, 2012.

Were you working on that day?

A Yes, I was.

Q What tour were you working?

A I was doing a midnight tour which is 11:15 p.m. to 7:50 A.M.

Q Were you working alone or with a partner?

A I was with a partner.

Q What is your partner's name?

A Officer Aljerio.

Q Were you on foot patrol or in a car?

A In a marked RMP.

Q Were you in uniform or plain clothes?

A I was in uniform.

Q Directing your attention to, approximately, 2:55 a.m. on July 30, 2012. Did you have occasion to be in the vicinity of the intersection of Merrick Boulevard and Montauk Street?

A Yes.

THE COURT: What was the street?

MS. PISCIONERE: Montauk Street M O N T A U.K.?

THE COURT: Were you, in fact, in that location?

THE WITNESS: Yes.

Q Is that location in Queens County?

A Yes, it is.

Q What brought you to that location?

A I was traveling eastbound on Merrick Boulevard and two cars -- approximately two cars in front of me I observed the vehicle in front of me make a left -- made a lane change without using the signal.

THE COURT: Sustained as nonresponsive. Were you on routine patrol at that time?

THE WITNESS: Yes, I was.

THE COURT: Now, ask your question.

Q Were you driving or were you stopped?

A I was driving.

Q And do you know what direction in which you were driving?

A Eastbound.

Q What, if anything, did you observe while you were driving?

A I observed the vehicle in front of me in the right lane travel into the left lane without using the signal.

Q What type of vehicle was in front of you?

A It was a 2003 Honda, blue color.

Q And after you observed the vehicle change lanes -- actually, withdrawn.

How far -- can -- do you see the driver of the Honda Civic in the courtroom today?

A Yes, I do.

Q Please point out that person and describe an article of clothing that he is wearing.

A Sure, he is wearing a black zipper-up sweatshirt.

THE COURT: Indicating the Defendant. Is that the gentleman sitting at the table on the right side?

THE WITNESS: Yes, far right.

THE COURT: Indicating the Defendant.

Q What were the lighting conditions like?

A It was dark, well lit road.

Q And can you elaborate on "well lit"?

A Sure, it has light -- light post illuminating the light -- the streets.

Q And how many lanes were there going eastbound?

A There's two lanes going eastbound.

Q And two lanes going westbound?

A Correct.

Q How many other cars, or if there are any other cars, were on the road?

A There were a couple of cars. I don't remember exactly how many.

Q So, would you say it was light traffic or heavy traffic?

A Light traffic.

Q And after you saw the Defendant move lanes from right to left, what did you do next?

A I put my lights on and pulled the vehicle over.

Q Just to be clear, when the Defendant moved lanes from the right lane to the left lane, did he signal?

A No, he did not.

Q How many car lengths was the Defendant in front of you when you observed him?

A I would approximate two car lengths.

Q Were there any other cars between you?

A No.

MS. PISCIONERE: No further questions, Your Honor.

THE COURT: Cross-examination.

MR. JAIN: Yes.

CROSS EXAMINATION BY MR. JAIN:

Q Morning officer.

A Good morning.

Q You indicated that you were at the intersection of Montauk and Merrick Road, am I correct?

A Correct.

MR. JAIN: I would like to include in the record, Your Honor "A", a Google map of the precise location, which

is not big enough to visualize easy and a pencil sketch of the same location.

Q If you can please take a look at it and identify if that's exactly where you were.

COURT OFFICER: "A"?

MR. JAIN: Yes.

COURT OFFICER: Google map is Defense A and the street map Defense B, so marked.

THE COURT: Officer Canale, take a look at that and let us know when you are done looking at it.

THE WITNESS: Okay.

THE COURT: Questions, counselor.

MR. JAIN: Okay.

Q So, you testified that you were about two car lengths before the intersection of Montauk and Merrick Boulevard and you were driving on Merrick Boulevard eastbound?

MS. PISCIONERE: Objection, Judge.

THE COURT: Is that your testimony?

THE WITNESS: No.

THE COURT: That is not his testimony.

MR. JAIN: I'm sorry.

Q You were driving on Merrick Boulevard. Were you in the right lane or the left lane?

THE COURT: Were you driving on Merrick Boulevard?

THE WITNESS: When I first observed the vehicle.

Q You were two car lengths behind the vehicle of the Defendant?

A Correct.

Q The Defendant's car was in the right lane, your car was in the right lane or the left lane?

A The right lane.

Q Did you get to observe whether the Defendant's car came from Farmers Boulevard or the Defendant's car was all the way coming on Merrick Boulevard from the get-go?

A I don't remember where the car was before that.

Q Can you let the Court know if there was any way the Defendant could have made a turn at the intersection?

A At which intersection?

Q Montauk and Merrick.

THE COURT: Objection sustained. There was no testimony that the car was at any point at an intersection. So, it assumes a fact not in evidence. If you want to try to establish that, you can do that.

MR. JAIN: Thank you, Your Honor.

Q Now, you testified there were two lanes and there was no signal and the driver changed from the right lane to the left lane. Did you also move over to the left lane behind him before you pulled him over?

A Yes.

Q And how many cars were there behind your car, if you

remember?

A I don't remember how many cars were behind me.

Q Were there any cars in the left lane when the Defendant moved over to the left lane without signaling?

THE COURT: Do you recall?

THE WITNESS: I don't recall right now.

THE COURT: Mr. Jain, understand I have to stop, I apologize. I did kind of warn you, I got another note from the jury. I have to do about a fifteen minute read back.

Officer Canale you are under oath. Please don't discuss your testimony with anyone. We will probably resume about fifteen, twenty minutes.

COURT OFFICER: Officer, you can step outside.

MR. JAIN: Thank you, Your Honor.

* *

COURT OFFICER: Case on trial, Anthony Onuorah.

THE COURT: Okay, is the witness outside?

MS. PISCIONERE: Yes.

COURT OFFICER: Witness entering, Your Honor.

(Whereupon witness enters the courtroom.)

COURT OFFICER: Officer, I remind you, you are still under oath.

THE COURT: Mr. Jain, you were cross-examining Officer Canale.

MR. JAIN: Sure.

CROSS EXAMINATION BY MR. JAIN: (continued)

Q As I was asking you, officer, you saw the car in front of you make a lane change from one lane to the other. As a result of that, even assuming he did not do that with signals, was there any risk factor to the car behind that moving car, either in the lane or in the left lane?

MS. PISCIONERE: Objection, Your Honor.

THE COURT: In that particular -- the objection is overruled. There is some language in that statute that does indicate whether the actions can be taken without creating a risk.

Can you answer that question?

A If there was a car in the left lane there would have been a risk, yes.

Q But there was no car, to the best of your recollection?

A I don't remember if there was.

Q I understand. So, it would be possible that there might be a risk factor to the car coming in the left lane and you don't remember for sure there was coming a car in the left lane or not?

THE COURT: Can you answer that?

A It's a possibility.

Q But you moved to the left lane to pull him over?

A Correct.

Q So, if there were a car in the left lane, I assume you would have looked in the left hand mirror to see --

MS. PISCIONERE: Objection.

THE COURT: Objection sustained.

Q The statute talks about movement left or right upon a roadway. Now, it's a two lane roadway at that juncture?

THE COURT: Is that correct?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q Single lane is also called a roadway?

THE COURT: Is that your understanding of the definition of "roadway"?

THE WITNESS: Yes.

Q There is a single lane, it's also called a roadway?

A Correct.

Q The roadway's width is pretty big for a small car like the Defendant's to make movements right or left?

MS. PISCIONERE: Objection.

THE COURT: Sustained.

MR. JAIN: Your Honor, I have no other questions.

THE COURT: I have a couple of questions.

Was it a two-way roadway?

THE WITNESS: It was two ways both -- two lanes traveling eastbound and two lanes traveling westbound.

THE COURT: So there were four separate lanes of

traffic?

THE WITNESS: Correct.

THE COURT: Two would go east, two would go west.

THE WITNESS: Yes, separated by a divider.

THE COURT: A concrete divider?

THE WITNESS: Yes.

THE COURT: Now, were the lanes marked?

THE WITNESS: Yes.

THE COURT: Could you describe the markings on the lanes that were -- you were going eastbound?

THE WITNESS: Yes.

THE COURT: Can you please describe the markings on the pavement with respect to the eastbound lanes?

THE WITNESS: Sure. Between the two lanes was a dotted line.

THE COURT: A what line?

THE WITNESS: Dotted line.

THE COURT: What color were they, do you recall?

THE WITNESS: I believe it's white.

THE COURT: Did you have occasion to, this is back in 2012, back on July 30, 2012, can you describe in more detail whether the dotted lines in any way were faded?

THE WITNESS: No.

THE COURT: Did you say the color?

THE WITNESS: They were white.

THE COURT: Any redirect?

MS. PISCIONERE: Briefly, Judge.

REDIRECT EXAMINATION BY MS. PISCIONERE:

Q Officer, when you pulled over the Defendant, how did you pull him over, with lights?

A Yes, I put the lights and I beep the siren.

Q Did you pull him over to the left side of the street or the right side of the street?

A After he was established in the left lane, I was behind him and then he moved from the left to the right and then to the shoulder.

Q When you put your lights on, did the Defendant immediately pull over?

A Yes.

MS. PISCIONERE: No further questions.

THE COURT: Any recross based upon those few questions?

MR. JAIN: No, Your Honor.

THE COURT: Thank you very much Officer Canale, I appreciate it.

THE WITNESS: Thank you.

COURT OFFICER: Thank you, officer, you can step down.

THE COURT: People, do you have another witness?

MS. PISCIONERE: No, Judge, the People rest.

THE COURT: Mr. Jain, any witnesses?

MR. JAIN: No witnesses, but some arguments if that is allowed.

THE COURT: Yes, if you are ready for your closing argument.

MR. JAIN: My first question is, are post Memorandum of Law allowed in criminal cases?

THE COURT: Why don't we do summations on the trial and then if you have any legal issue you can include that. Now, if you feel the People have not made out a prime facie case. I am not texting, but pulling up the statute.

MR. JAIN: I have to make the legal arguments in my summation?

THE COURT: Tell me why you think your client is not guilty of this changing of lanes, or I should say 1163(a).

MR. JAIN: This may be a case of first impression in the sense that since the operative language in the charged section is moving right or left upon a roadway.

THE COURT: Okay.

MR. JAIN: That movement can be made with reasonable safety. It does not require any signals. The roadway can include a signal lane -- single lane roadway. In a single lane roadway a big, wide load or a truck may not be able to make left or right movements, but a small car can

very well make right or left movements in that roadway, in that single lane and therefore the statutory language is very, very vague and should not be used to convict a person when there is no requirement in connection with movement on a roadway within the same lane, which is possible, although the testimony says he made a change in the lane without signaling.

THE COURT: Is your argument that the change of lanes without signaling is not covered by this statute?

MR. JAIN: That is correct, that is precisely the point, beside the point that this section entirely deals with turning and does not deal with movement upon a lane per se.

Because obviously if the person has to make a left turn or a right turn he will have to make a movement to the left or right in that single lane to make the turn.

THE COURT: Okay.

MR. JAIN: Having said that, if a conviction is made under this section it will be a conviction without factual support and such a conviction would be a conclusory conviction without factual support, and the definition of the word conclusory has been provided by, in the case 823 F 2d 574 at 585. It's by Justice Ginsburg, who I think is still a current U.S. Supreme Court Justice. The case is Senate of Puerto Rico versus U.S. Department of Justice.

Having said that, there is a U.S. Supreme Court case going back to 1828, Elliott versus Lessee of Piersol, 26 U.S. (1 pet) 328 at 340 through 341 and the essence of that ruling is that where the Court has jurisdiction, and this Court does have jurisdiction, any decision made by the Judge of law or fact, if it is erroneous, it is still valid and enforceable, unless turned over.

However, if the Judge or the Court has acted above the law, that action is called without authority. In that situation, the judgments are regarded as nullity, void from day one and there is no reason to have it declared even as void, it just is void.

My argument is that the conclusory conviction, based on the vague definition or language used in the section about movement makes it a conclusory decision, a conclusory conviction and therefore the case should be dismissed as a conclusory charge without facts.

THE COURT: Another way of saying it, you do not believe -- the statute does not put the driver or motorist on fair notice --

MR. JAIN: That's correct, Your Honor.

THE COURT: Anything else?

MR. JAIN: No, I think that's enough.

THE COURT: Thank you. People.

MS. PISCIONERE: Just one moment Judge, please.

THE COURT: Sure.

MS. PISCIONERE: Your Honor, this case is about driving and being unable to follow the rules of the road. The Court heard testimony from Officer Canale that on July 28, 2012 the Defendant was driving here in Queens County and he failed to indicate a lane change as he moved from the right lane to the left lane.

We know this because the Court heard from Police Officer Canale who has made over a hundred traffic stops in the six and a half years he has been a police officer.

He testified about 2:55 A.M. he observed the Defendant driving down Merrick Boulevard and he testified that the Defendant's car was, approximately, two full car lengths in front of him and he observed the Defendant move from the right lane to the left lane without signaling.

Furthermore, Your Honor, the police officer testified that there was traffic on the road behind the officer. There was a possibility there was traffic behind the officer and there was traffic in front of the Defendant's car.

The police officer further testified that this was a well lit area and that the lanes were clearly marked. They were white dotted lines and the Defendant moved from the right clearly designated lane to the left clearly designated lane without signaling with traffic on the road.

Your Honor, the People proved beyond a reasonable doubt that the Defendant unlawfully moved from one lane to another without signaling and I am asking the Court to find the Defendant guilty of Vehicle and Traffic Law 1163(a).

THE COURT: Thank you.

Counsel made an argument that the statute is vague and does not put the motorist on notice as to exactly what is prohibited. While I agree the statute is not written in the best manner it probably could, it probably should be broken up into more subsections, but it is not vague.

It is not unconstitutionally vague. I would point out that there is not enough evidence to convict the Defendant of that portion which involves any type of movement that could not be made -- I'm sorry, any type of dangerous movement concerning any other cars around.

There was not sufficient testimony about surrounding motor vehicles that indicated that such changing of lanes was not safe, or any such movement. So, that portion of the statute does not apply.

Now, the statute, the Vehicle and Traffic Law defines turns. It does define U-turns. U-turns involve changing directions and that is in the definition part at the beginning of the Vehicle and Traffic Law. This particular statute, the relevant portion for this case reads as follows: "No person shall turn a vehicle at an

intersection unless the vehicle is in a proper position upon the roadway as required by this section."

This was not a turn at an intersection. That section of the statute does not apply. If further reads "or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless or until such movement can be made with reasonable safety."

That section does not apply. However, it further reads "no person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided."

The statute doesn't say that a turn, in my view, in my reading of the statute means a turn is not simply a left turn or a right turn or a U-turn. It clearly means any movement from a change -- change of movement from a direct course, whether right or left.

Based upon that and based upon the officer's testimony that the lanes were, in fact, clearly marked -- if they were not marked then it would be a different result. His testimony is that the lanes were, in fact, clearly marked and that the Defendant went from the right lane to the left lane without signaling.

I do find the officer's testimony to be credible. I do find the Defendant did, in fact, violate section 1163(a) and I do find the People have proven the case beyond a reasonable doubt. I do find the Defendant guilty of that

lone count in the Information and I am prepared to impose a sentence, unless you want to be heard.

MR. JAIN: Yes, Your Honor.

THE COURT: What would you like?

MR. JAIN: Just based on your assertion, although you find him pretty much guilty, the argument that I need to let you know, that even the movement portion is subservient to turning and if Your Honor says that the turning is included in the word "movement", then according to Your Honor, even a U-turn is included in the word "movement".

THE COURT: "U-turn" has a very specific definition in Vehicle and Traffic Law. I looked for the term "turn". "Turn" does not have a specific definition, although this section, 1163(a) does give various examples of the types of turns, a turn from an intersection.

MR. JAIN: Right.

THE COURT: A change of lane, which is going from a direct course to move the car from right to left is descriptive of a change of lanes.

MR. JAIN: Right, but the vagueness does go to the extreme. Even a single lane is called a roadway and there is no way a turn can be made unless, again, same argument that movement within that single lane also could be used to turn, but in that case there is no signal requirement.

THE COURT: All right, if you want to make any

subsequent motions you are free to do so. If you want to be heard as to any sentence.

MR. JAIN: Your Honor, this is the first I think charge against him.

THE COURT: I would like to impose the minimum fine allowed by law, which I don't even know what it is.

Do People want to be heard as to sentence?

MS. PISCIONERE: No, Judge.

THE COURT: We will find out what the minimum fine is. Parties step up real quick.

(Whereupon a bench discussion was held.)

THE COURT: After re-examining the statute more closely and reading sub section "D" of section 1163, clearly sub section "D" is the section that should have been charged, because that prohibits lane changes without signaling.

Sub section "A" as I reread it many, many more times, my initial reading of it was incorrect in that the movement from right to left is illegal if it's done so in a manner that would create a safety issue on the road.

As I stated, there was no testimony about a safety issue as a result of the unsignaled lane change. Therefore, that part of the statute would not apply. What I read, "no person shall turn any vehicle without giving appropriate signal in a manner hereinafter provided" means the

subsections that follow.

Since the People tried the case under 1163(a), the Defendant did not violate that subsection and I have to change my verdict to not guilty. Had they charged him with 1163(d) he would have been found guilty and therefore the Defendant is found not guilty. Case dismissed.

COURT OFFICER: You're free to go.

THE DEFENDANT: Thank you, Your Honor.

MR. JAIN: Your Honor, thank you.

* * *

This is certified to be a true and accurate transcription of the stenographic record of the above proceedings taken within.

ANGELA MOODY
OFFICIAL COURT REPORTER