

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

**1305**

**KA 09-00912**

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PERADOTTO, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

LARRY SMITH, JR., DEFENDANT-RESPONDENT.

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FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DONNA A. MILLING OF COUNSEL), FOR APPELLANT.

THOMAS J. CASEY, WILLIAMSVILLE (ARTHUR G. BAUMEISTER, JR., OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Erie County Court (Michael F. Pietruszka, J.), entered February 11, 2009. The order granted defendant's motion to suppress certain evidence.

It is hereby ORDERED that the order so appealed from is unanimously affirmed and the indictment is dismissed.

Memorandum: The People appeal from an order granting defendant's motion to suppress evidence seized as the result of a traffic stop. We conclude that County Court properly suppressed the evidence on the ground that the police officer made a mistake of law in stopping defendant's vehicle, which had in fact performed a legal pass on the right pursuant to Vehicle and Traffic Law § 1123 (a) (1) and (2). "Where the officer's belief is based on an erroneous interpretation of law, the stop is illegal at the outset and any further actions by the police as a direct result of the stop are illegal" (*Matter of Byer v Jackson*, 241 AD2d 943, 944-945; see *People v Smith*, 1 AD3d 965; see also *People v Gonzalez*, 88 NY2d 289, 295-296).

Entered: November 13, 2009

Patricia L. Morgan  
Clerk of the Court