

People v Drago

2017 NY Slip Op 33314(U)

July 10, 2017

Supreme Court, Orange County

Docket Number: 2930/2017

Judge: Robert H. Freehill

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ORLANDO DRAGO,

Defendant.

-----X

FREEHILL, ROBERT H., J.C.C.

Indictment No. 2017-287

Index No. 2930/2017

DECISION AND ORDER

Defendant is charged in this indictment with the crimes Aggravated Operating a Motor Vehicle While Under the Influence of Alcohol, as a class E felony and Operating a Motor Vehicle While Under the Influence of Alcohol as a class E felony (2 counts).

By this omnibus motion the defendant has moved for certain pretrial relief which the Court decides, having considered: 1.) the defendant's notice of motion and affirmation; 2.) the People's affirmation in response; and 3.) the transcript of Grand Jury proceedings.

Motion to Inspect Grand Jury Minutes
Motion to Dismiss or Reduce Indictment

The motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

Request For Bill of Particulars

The defendant's motion for the particulars sought is granted to the extent provided by the District Attorney in the Voluntary Disclosure Form previously tendered and as provided in the affirmation in response to the motion herein. In all other respects this branch of defendant's

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motion is denied.

Motion for Discovery and Inspection

The defendant's motion for discovery and inspection is granted to the extent information has been provided to the defendant in the Voluntary Disclosure Form and as set forth in the People's affirmation in response. In all other respects, this branch of defendant's motion is denied.

Motion to Suppress Statements

The motion is granted to the extent that a hearing is hereby ordered pursuant to CPL 710.60(4) to determine the admissibility of any statements allegedly made by the defendant.

Motion to Suppress Physical Evidence

The motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60(4) to determine the admissibility of any physical evidence allegedly seized from defendant.

Motion to Suppress Chemical Test Result

Defendant moves to suppress the result of the breath test alleging that the police failed to follow proper procedures. The failure of the police to follow rules and regulations when administering the breath test is a matter that goes to the weight of the evidence, not its admissibility (*see, People v Schuessler*, 14 Misc 3d 30 [App Term, 9th & 10th Jud Dists 2006]). Accordingly, defendant's motion for suppression or a hearing is denied.

Motion to Be Provided with *Brady* Material

The motion is granted to the extent that the District Attorney is directed to disclose to defendant's attorney any and all documents, materials and/or information, if any, required to be

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disclosed pursuant to *Brady v Maryland*, 373 US 83.

Motion for a Sandoval Ruling

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court further orders the District Attorney to disclose to defendant's attorney any and all bad acts and convictions which will be used to impeach defendant three days prior to the commencement of trial in accordance with CPL §240.43.

Motion Pursuant to Ventimiglia/Molineux

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as evidence in the People's case. The Court further orders the District Attorney to disclose to defendant's attorney any and all acts and convictions which he intends to present during its direct case.

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York
July 10, 2017


ENTER:

HON. ROBERT H. FREEHILL
County Court Judge

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