

People v Surkis

2018 NY Slip Op 34046(U)

September 27, 2018

County Court, Orange County

Docket Number: 2018-088

Judge: William L. DeProspero

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: ORANGE COUNTY
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO. 2018-088

INDEX # 1689-2018

DECISION AND ORDER

CHAIM SURKIS,

Defendant.

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DePROSPO, W.

Defendant is charged in this indictment with the crimes of **ASSAULT IN THE SECOND DEGREE**, a class D felony, in violation of section 120.05(3) of the Penal Law of the State of New York; **UNLAWFUL FLEEING A POLICE OFFICER IN A MOTOR VEHICLE IN THE THIRD DEGREE**, a class A misdemeanor, in violation of section 270.25 of the Penal Law of the State of New York (2 counts); **RECKLESS ENDANGERMENT IN THE SECOND DEGREE**, a class A misdemeanor, in violation of section 120.20 of the Penal Law of the State of New York; **RECKLESS DRIVING**, a class A misdemeanor, in violation of section 1212 of the Vehicle and Traffic Law of the State of New York; and **RESISTING ARREST**, a class A misdemeanor, in violation of section 205.30 of the Penal Law of the State of New York.

Defendant has moved for certain pre-trial relief. The Court, having considered the following papers:

-Defendant's notice of motion and affirmation, submitted by Michael D. Meth, Esq.;

-People's affirmation in response, submitted by Neal E. Eriksen, Esq., Assistant District Attorney, Orange County District Attorney's Office;

-Grand Jury Minutes-Indictment-Voluntary Disclosure Form;

It is hereby ORDERED that the defendant's motion is decided in the following manner:

MOTION TO INSPECT GRAND JURY MINUTES

Defendant's motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury *in camera*. The Court finds that release of the minutes is not necessary to the determination of this motion. The Court further finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

MOTION FOR A DUNAWAY/INGLE HEARING

Defendant's motion is granted, on consent, and a *Dunaway* hearing is granted with respect to the initial stop of defendant's vehicle.

MOTION TO SUPPRESS STATEMENTS

Defendant's motion is granted to the extent that a hearing is hereby ordered on the issue of the voluntariness of any statement made to law enforcement personnel.

MOTION TO PRECLUDE IDENTIFICATION EVIDENCE

Defendant's motion to preclude the introduction of any identification testimony, notice of which was not given by the People pursuant to CPL §710.30 is denied with leave to renew at a time when the People seek to use any such evidence.

MOTION FOR A SUPPLEMENTAL BILL OF PARTICULARS

A bill of particulars is not a discovery device, it serves to clarify the pleading. *People v. Davis*, 41 N.Y.2d 678 (1977). Defendant's motion is denied as the information provided by the

People is sufficient to enable defendant to adequately prepare or conduct a defense. CPL §220.95.

MOTION FOR DISCOVERY AND INSPECTION

Defendant's motion is granted to the extent that the information was previously provided or inspection was consented to in the People's Voluntary Disclosure Form and/or Affirmation in Response. In all other respects, defendant's application is denied.

MOTION FOR A SANDOVAL AND VENTIMIGLIA HEARING

Defendant's motion is granted to the extent that a hearing is hereby ordered which will be held 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 will also order a hearing to determine, which, if any, bad acts or convictions may be used as evidence in the People's direct case. The District Attorney is ordered to disclose, in accordance with CPL Section 240.43, any and all acts which he intends to use for purposes of impeaching defendant at trial, as well as any and all acts and/or convictions to be presented as evidence in chief.

MOTION FOR BRADY MATERIAL

Defendant's motion is granted to the extent that the District Attorney is directed to disclose to defendant any and all documents, materials and/or information, if any, required to be disclosed pursuant to *Brady v. Maryland*, 83 S.Ct. 1194 (1963).

The People are further reminded of their *Brady* obligations as set forth in the Administrative Order of the Chief Administrative Judge previously provided to all parties.

RESERVATION OF RIGHTS

The defendant's reservation of his right to make further motions is denied and any future motions shall be summarily denied absent the requisite showing pursuant to *CPL § 255.20(3)*.

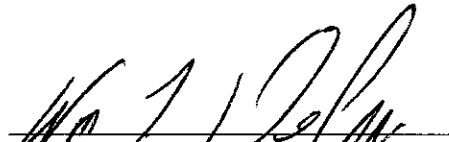
CONFERENCE/HEARING DATE

This case is scheduled for conference on **October 5, 2018** at 9:30 a.m. All parties are directed to appear.

The above constitutes the Decision and Order of the Court.

Dated: Goshen, New York
September 27, 2018

E N T E R



HON. WILLIAM L. DE ROSPO
COUNTY COURT JUDGE

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