

People v Diaz

2018 NY Slip Op 34047(U)

May 11, 2018

County Court, Orange County

Docket Number: 2018-093

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. 2018-093

INDEX # 1636-2018

DEIVI DIAZ,

DECISION AND ORDER

Defendant.

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DePROSPO, W.

Defendant is charged in the Indictment with the crimes of **CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE**, a class B felony, in violation of section 220.16(1) of the Penal Law of the State of New York; **CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE**, a class C felony, in violation of section 220.09(1) of the Penal Law of the State of New York; and **UNLAWFUL POSSESSION OF MARIHUANA**, a violation, in violation of section 221.05 of the Penal Law of the State of New York.

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

- Defendant's notice of motion and affirmation, submitted by Christopher G. Berger, Esq.;
- People's affirmations in response, submitted by Janine M. Kovacs, Esq., Assistant District Attorney, Orange County District Attorney's Office;
- Grand Jury Minutes-Indictments-Voluntary Disclosure Forms;

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 TO SUPPRESS PHYSICAL EVIDENCE

Defendant's motion is granted to the extent that a hearing is hereby ordered pursuant to CPL Section 710.60(4) to determine the admissibility of any physical evidence seized. The defendant's moving papers are sufficient to warrant a hearing on the issue of suppression.

People v. White, 137 AD3d 1311 (2nd Dept., 2016).

Further, defendant's motion seeking a Dunaway hearing to determine whether there was probable cause to effectuate his arrest is granted. *People v. Mendoza*, 82 NY2d 415, 429-430 (1993).

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 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).

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MOTION FOR A SANDOVAL HEARING

Defendant's 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 District Attorney is further 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.

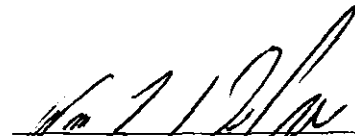
CONFERENCE/HEARING DATE

This case is scheduled for conference on **May 14, 2018** at 9:30 a.m. All parties are directed to appear.

The above constitutes the Decision and Order of the Court.

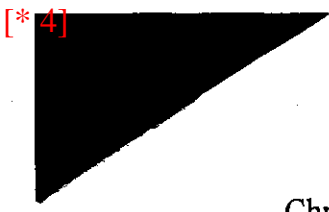
Dated: Goshen, New York
May 11, 2018

ENTER



HON. WILLIAM L. DEPROSPO
COUNTY COURT JUDGE

TO: DAVID M HOOVLER.
ORANGE COUNTY DISTRICT ATTORNEY
Attorney for the People
255-285 Main St.
Goshen, New York 10924

A black triangular redaction mark is located in the top-left corner of the page, partially overlapping the text.

Christopher G. Berger, Esq.
Attorney for Defendant
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