

People v Martin

2017 NY Slip Op 33255(U)

April 25, 2017

County Court, Orange County

Docket Number: 1173/2017

Judge: Robert H. Freehill

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ORIGINAL

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

EDWARD J. MARTIN,

Defendant.

-----X

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

Indictment No. 2017-106

Index No. 1173/2017

DECISION AND ORDER

Defendant is charged in this indictment with the crimes of 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.

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 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 Physical Evidence
Motion to Suppress Chemical Test 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. The hearing will also determine the propriety of the “taking” of the breath sample used to determine defendant’s blood alcohol content. The defendant moves to suppress the breath sample seized by the police because the police lacked a sufficient basis to arrest defendant and did not have a basis to believe that he operated the automobile. The defendant alleges that he was parked, that he denied involvement in an accident and that he exhibited no indicia of intoxication.

Motion to Suppress due to Radio Frequency Interference

The allegations in defendant’s motion are irrelevant to the facts in this matter. The Voluntary Disclosure Form served upon defendant at the time of arraignment indicates that the test was performed on an Alcotest 9510 instrument. The defendant’s motion is based upon the effect of radio frequency interference on certain models of Smith and Wesson instruments. Accordingly, defendant’s motion is denied.

Motion to Suppress Evidence of Physiological or Performance Tests

Defendant moves to suppress evidence concerning the performance of field sobriety tests because Miranda warnings were not given. Field tests are non-testimonial and Miranda warnings are not required. [See, *People v. Hagger*, 69 N.Y.2d 141 (1987)]. Therefore, defendant’s motion is denied.

Motion to Dismiss in Interests of Justice

With regard to that branch of defendant's motion seeking dismissal in the interests of justice, the defendant has failed to enumerate the standards necessary for the Court's consideration pursuant to CPL §210.40. Moreover, upon a review of the minutes of the Grand Jury proceedings and the papers filed in connection with this motion, there is no basis to dismiss this indictment (*see* CPL §210.40). Finally, any felony complaint filed has been replaced by this indictment. Defendant's application is denied.

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.

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 Inspect Grand Jury Minutes
Motion to Dismiss or Reduce Indictment

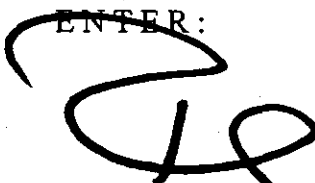
The motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

Motion to Request Timely Hearings

Defendant requests that any pretrial hearings be held sufficiently prior to the time of the commencement of trial so as to allow for the transcription of the hearing minutes for use by the defendant at trial. Unless such request for transcribed minutes is withdrawn by defendant's counsel at the conclusion of any such pretrial hearing, this Court will deem defendant's request herein as one made in a timely fashion and any necessary and reasonable adjournment of trial proceedings for the purpose of transcribing hearing minutes will be granted as deemed necessary by the Court (*People v Peacock*, 31 N.Y.2d 907 [1972]).

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York
April 25, 2017

ENTER:


HON. ROBERT H. FREEHILL
County Court Judge