People v Naranjo
2019 NY Slip Op 32430(U)
April 4, 2019
Tuxedo Town Court, Orange County
Docket Number: 18080182
Judge: Alyse McCathern

STATE OF NEW YORK, COUNTY OF ORANGE

TUXEDO TOWN COURT

THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND

-against-

SCHEDULING ORDER

JOSE NARANJO, Defendant

Case Number: 18080182

By Omnibus Motion dated November 13, 2018, defendant Jose Naranjo, through his attorney, Zev Goldstein, requested various forms of relief relative to the within criminal proceeding. In response, the People have filed an Affirmation in Opposition. In ruling upon defendant's motion for the following relief sought, the Court holds as follows:

MOTION TO DISMISS UNIFORM TRAFFIC TICKET P1688LZC5 [MOTION 1]

Defendant seeks to dismiss the charge of Vehicle and Traffic Law §1128A Moved from Lane Unsafely for want of a supporting deposition. The People do not oppose. A review of the Court's file indicates that a supporting deposition for this charge was requested, but not received. Therefore, pursuant to § 100.25 of the Criminal Procedure Law the charge of § 1128A Moved from Lane Unsafely must be dismissed. Defendant's motion is granted.

MOTION TO PRECLUDE DEFENDANT'S STATEMENT, PHYSICAL EVIDENCE, PEOPLE'S WITNESSES AND RADAR READING, OR COMPEL DISCOVERY [MOTIONS 2-5]

Defense seeks to preclude Defendant's statements, physical evidence, witnesses and radar reading alleging that the People have failed to provide discovery pursuant to CPL § 240.70. In response, the People concede their obligation under Rosario and ongoing responsibility to disclose Brady material, but assert that "under the terms of the People's voluntary discovery letter, those requests contained in defendant's motion that are authorized by statute have already been *consented to* (emphasis added)." The People cross-move and demand discovery pursuant to CPL § 240.30.

The People have not specified what information has been provided to defense counsel. Defense counsel has not specified what it believes has been withheld. In any event, the Court cannot know if the People have met their obligation to provide information that is discoverable under CPL § 240.20. Moreover, subsection 2 mandates that the prosecutor "shall make a diligent, good faith effort to ascertain the existence of demanded property and to cause such property to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control," except for materials that the defendant may obtain by subpoena *duces tecum*. Therefore, the Court orders that all materials in the People's control or possession not yet disclosed pursuant to CPL § 240.20, if any, be provided to the defense no later than two (2) weeks from the date of this decision. The Court also orders reciprocal discovery pursuant to CPL § 240.30 under the same terms. Prosecutor and defense counsel shall provide the Court with the list of all materials disclosed at the same time.

MOTION TO ORDER A MAPP/DUNAWAY/HUNTLEY HEARING ON THE ISSUE OF PROBABLE CAUSE AND MOTION TO SUPPRESS EVIDENCE AND STATEMENTS FLOWING THEREFROM [MOTION 7]

Defendant alleges that he was stopped and searched in violation of his rights under the Fourth Amendment of the United States Constitution; that the officer did not have probable cause to stop the defendant and that, consequently, all statements and evidence flowing therefrom should be suppressed. Defendant moves for a Mapp/Dunaway/Huntley hearing on the issues contested. The People dispute defendant's allegations, but consent to the hearing. The Court grants a Mapp hearing on the question of whether evidence was seized in violation of the Fourth Amendment. The Court grants a Dunaway hearing on the question of whether there was probable cause for the arrest. The Court also grants a Huntley hearing on the question of whether defendant's statements to the officer should be suppressed. The Mapp/Dunaway/Huntley hearing shall be held at a date established by the Court after the conclusion of discovery as ordered herein pursuant to CPL §§ 240.20 and 240.30.

Defendant also requests Rosario material five (5) days before the hearing. Pursuant to CPL § 240.44, Rosario materials must be provided at the conclusion of the direct examination of each witness in a pre-trial hearing or after the jury has been sworn; or, if at trial, before the prosecutor's opening address pursuant to CPL § 240.45. The statute governing disclosure prior

to a hearing is unequivocal: Subject to a protective order, each party, at the conclusion of the direct examination of each of its witnesses, shall, make upon request of the other party, make available to that party Rosario material to the extent not previously disclosed.

Although the statute does not entitle the defense to Rosario material until the conclusion of direct examination, this Court finds that the request for materials prior to the hearing is not unreasonable. Therefore, the Court grants Defendant's request to provide any additional Rosario material not disclosed and not subject to a protective order no later than three (3) business days prior to the commencement of any hearing and/or trial.

The People remain under Brady Obligation.

MOTION TO PRECLUDE INADMISSIBLE EVIDENCE PURSUANT TO FRYE/DAUBERT [MOTION 6.A]

The People assert that Defendant failed several field sobriety tests administered during the traffic stop at issue. Although Defendant concedes that field sobriety tests are accepted in the scientific community, he contests the results of said tests. He alleges, *inter alia*, that he "completed the sobriety tests exactly as directed by Trooper Burke,"[1] and requests a Frye/Daubert hearing for the limited purpose of determining whether the tests were performed correctly. Because the scientific validity of field sobriety tests are accepted in the scientific community, as Defendant concedes, a Frye/Daubert hearing is denied. However, during the Mapp-Dunaway/Huntley hearing, the People and defense counsel will have the opportunity to question Trooper Burke as to whether the field sobriety tests were administered, scored, and assessed in accordance with the generally accepted techniques and procedures.

MOTION TO PRECLUDE OFFICER'S CONCLUSIONS THAT THE DEFENDANT FAILED THE FIELD SOBRIETY TESTS [MOTION 6.B]

Defendant next seeks to preclude the arresting officer's conclusion that the defendant failed five (5) sobriety tests administered during the traffic stop and limit the officer's testimony at trial to only the facts. Defendant posits that because the officer is not an expert and because intoxication is not a subject matter beyond the ken of the typical juror, the jury can decide whether the defendant was intoxicated at the time of the traffic stop based solely upon a

[1] Naranjo Affidavit, November 16, 2018, at paragraph 5.

recitation by the officer of his observations at the time. Defendant relies, in part, on Burke v. Tower E. Rest., 37 A.D.2d 836, 836, 326 N.Y.S.2d 32 (1971), for the proposition that lay witnesses "who have sufficiently observed the actions of a person may testify categorically that the latter was sober or intoxicated." Id., at 836. In Burke, witnesses who had observed the plaintiff for several hours testified to the plaintiff's manner of walking and speech prior to plaintiff's fall in the restaurant. The Second Department determined that the trial court erred in not allowing the witnesses to state their opinions as to whether the plaintiff was intoxicated at the time of the fall. The Court understands that many, if not most, adults who have observed a person for some time can form a reasonable conclusion as to whether the person is drunk or sober (barring physical, or other, infirmaries). However, unlike the witnesses in Burke, the jury here will not have witnessed the defendant's manner of walking and speech at the time of the traffic stop.

The Court will not summarily preclude the arresting officer's conclusions as to the field sobriety tests. Nevertheless, during the Mapp-Dunaway/Huntley hearing the prosecution and defense will have an opportunity to address the question of whether the tests were properly administered. Subsequent to the conclusion of the hearing, the Court will render a decision as to whether the officer's testimony shall be limited to his observations.

PRECLUSION OF TERM "FIELD SOBRIETY TEST" [MOTION 6.C]

Defendant objects to the use of the term "field sobriety test" as prejudicial because the test does not actually measure sobriety or intoxication. The Court denies Defendant's motion to bar the term during trial. A series of tests were developed by the United States National Highway Safety Administration designed to indicate intoxication associated with alcohol consumption. These tests are commonly referred to, collectively, as "field sobriety tests," and are widely used throughout the United States to help police officers assess whether a person is driving while impaired. Defendant concedes that the tests are "simple speaking and coordination procedures" that "may reveal slurred speech or a lack of coordination that could be a factor in assessing whether a person is intoxicated." Defendant has not suggested an alternative term to apply to these standardized tests, nor did the Court find a different term used either in the literature or in court decisions. In fact, a simple search on West Law uncovered 535 New York

cases which use the term, including 11 cases decided by the Court of Appeals. Defense may decline to use the term during trial, but the Court will not impose a general prohibition on its use.

MOTION TO EXCUSE DEFENDANT'S PRESENCE IN COURT INCLUDING AT TRIAL [MOTION 8]

Defense seeks waiver of Defendant's presence before this Court during appearances, the hearing and subsequent trial and submits Defendant's notarized Waiver and Authorization authorizing his attorney to appear in his absence. The People have opposed Defendant's request, but offer no reason for such opposition. A defendant may expressly waive his right to be present so long as the waiver "results from a knowing, voluntary and intelligent decision." People v. Rossborough, 27 N.Y.3d 485, 488, 54 N.E.3d 71 (2016). The Court finds that Defendant's notarized Waiver and Authorization is sufficient to grant Defendant's request and hereby rules that Defendant may exercise his right not to appear before this Court during the pendency of this proceeding.

The foregoing constitutes the opinion, decision and Order of this Court.

Dated: April 4, 2019

Hon. Alyse McCathern
Tuxedo Town Justice