

**People v. D.A.** (Roch. City Ct., 2/2022)

**MR. CORLETTA OBTAINS SIGNIFICANT REDUCTION IN SERIOUS DWI ACCIDENT CASE WITHOUT HAVING TO CROSS EXAMINE ARRESTING OFFICER**

Consider this scenario: Client has been drinking. Returns home from party. While driving down a city street, client loses control, strikes parked vehicle, and bounces into middle of street. Client must be extricated from vehicle by Fire and Emergency personnel. Client fights with them. Client later becomes belligerent with police and refuses to provide name. Client subsequently submits to breath test with result well over legal limit.

This is a scenario in which most lawyers would throw up their hands and beg for mercy from the District Attorney and Court.

Not Mr. Corletta; he attacks it.

Carefully analyzing the situation, Mr. Corletta quickly notes there were 2 officers involved, neither of whom saw the accident happen. The first officer arriving at the scene had minimal interaction with the client. He called a second officer, presumably more experienced in DWI investigations, to administer Field Sobriety Tests, although client was on a gurney in an ambulance, and in no condition to perform such tests.

First, Mr. Corletta carefully examined the Accusatory Instruments. He noted that although 3 underlying traffic violations were charged, there was no enunciation of any facts supporting those charges. Mr. Corletta requested Supporting Depositions for all 3 charges. When none were rendered, Mr. Corletta quickly obtained their dismissal; thereby saving the client 9 points.

The Supporting Depositions that were filed were conclusory as to the driving violations and did not support them. The officers did not observe the accident and did not bother to enunciate any facts providing circumstantial evidence that Defendant committed the underlying traffic violations.

Mr. Corletta next moved to the two DWI charges. Attacking the charge of Driving with BAC over .08%, Mr. Corletta pointed out there was no actual Supporting Deposition establishing Defendant's BAC.

Mr. Corletta made this argument in writing and twice in open Court, and further argued Defendant's license should not have been suspended because there was an inadequate Accusatory Instrument that did not show an illegal BAC. The Court agreed and dismissed that charge, over the bewildered Prosecutor's objection. At this point, four out of the original 5 charges had been dismissed.

The only original charge left was the so-called "Common Law" Driving While Intoxicated,

which was based upon observations of Defendant at the scene, Defendant's physical condition, and Defendant's alleged admission as to driving, after being questioned on the gurney.

Mr. Corletta attacked the evidence establishing Defendant was the operator. This was made easier because at the Probable Cause Hearing, the People failed to produce the first officer who saw Defendant being removed from the vehicle.

The second officer displayed a flippant attitude and only had been involved in 12 prior Driving While Intoxicated arrests. He did an inadequate investigation. He displayed an inadequate knowledge of Field Sobriety Testing and almost seemed bothered by the Prosecutor's questioning and Mr. Corletta's objections. The District Attorney also failed to lay an adequate foundation to admit the results of the Field Sobriety Tests into evidence, which were also performed improperly on a person just involved in a motor vehicle accident.

The hearing was prolonged due to Mr. Corletta's persistent objections, which were repeatedly sustained by the Court.

Finally at a sidebar, Mr. Corletta suggested a disposition to the District Attorney where his client would plead guilty to a reduced charge; a mere traffic violation. The District Attorney agreed to Mr. Corletta's proposal. The Court also agreed.

Mr. Corletta's client suffered a short-term license suspension, in which the client will have a Conditional License, provided the client attends a state-run Impaired Driver Program. The client also received the minimum fine. The client received no other punishment, and will not have to install the dreaded Ignition Interlock device on their vehicle. The client will not have a criminal record and will not be monitored.

Mr. Corletta was able to obtain this disposition by taking apart the People's case from an evidentiary standpoint. He never had to ask the officer a *single question*. This is where knowledge of the evidence and law in Driving While Intoxicated cases pays off. It prevents the client from being placed in jeopardy through a full adversarial hearing, since in most Driving While Intoxicated cases the client has been drinking. The case never reached the point where the merits were addressed, and the client benefitted. This has been Mr. Corletta's unique in handling these difficult DWI cases for his entire career *modus operandi*.