

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT CRIMINAL TERM**

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THE PEOPLE OF THE STATE OF NEW YORK,

DOCKET NO. 2008NA020490

Plaintiff(s)

against

**Present:
Hon. David Goodsell**

JOHN P. SWEENEY,

Defendant(s)
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HEARING DECISION

A refusal hearing took place on June 9, 2009 pursuant to consent of the parties. The Prosecution relied solely upon testimony of Police Officer Stephen Drenckhahn of the Floral Park Police Department.

The Prosecution established few facts during the course of the hearing. Officer Drenckhahn initiated a traffic stop of a vehicle driven by the Defendant after observing the vehicle being operated without any headlights. Officer Drenckhahn arrested the Defendant and transported him to Central Testing Station. The pair arrived at 3:30 a.m. on August 7, 2009. At 4:11 a.m., Officer Drenckhahn requested the Defendant submit to a chemical test of his breath. The request made by Officer Drenckhahn consisted of the Officer reading from a form which was never admitted into evidence. Officer Drenckhahn testified he asked the Defendant twice to take a breath test; however, both requests were refused.

The Prosecutor failed to establish what was actually read or told to the Defendant other than, according to Officer Drenckhahn, "a minimum revocation of your license for one year." (Transcript p. 10, line 16).

VTL § 1194(2)(f) requires a showing the Defendant received "sufficient warning in clear and unequivocal language of the effect of such refusal and that the person persisted in the refusal."

The Prosecution has failed to establish in the first instance the warnings given met the statutory requirements. The testimony that the warnings read came from a printed form fails to establish the sufficiency necessary. The statement by Officer Drenckhahn of a mandatory license suspension would occur is at best incomplete. *People v. Pagan*, 165 Misc 2d 255, 629 NYS2d 656 (Crim Ct, Queens Cty 1995). Incomplete warnings require suppression of the refusal. *People v. Boone*, 71 AD2d 859, 419 NYS2d 187 (2nd Dept 1979).

The refusal to submit to a breath test, together with the statements made by the Defendant in response to the request to submit to a breath test are suppressed.

This constitutes the decision and order of this Court.



DISTRICT COURT JUDGE

Dated: JUL 14 2009

cc: Massimo & Panetta
Kathleen M. Rice, District Attorney

DG/mp