CASE NAME: People v. Malone (District Court of Suffolk County, First District, 2015 NY Slip Op 51855(U); December 21, 2015)

FACTS AND PROCEDURAL HISTORY:
The factual allegations of the information state, *inter alia*, that on November 19, 2015 at approximately 3:23 AM the defendant was operating a motor vehicle at 65 mph in a 40 mph zone and that the defendant "had bloodshot glassy eyes, slurred and mumbled speech, she was unsteady on her feet" and that field sobriety tests or clues showed indications of impairment. The complainant police officer also alleges that the defendant stated, "I smoked some weed earlier." The information further states that the defendant refused to submit to a blood test. No Drug Recognition Evaluation is referenced.

The defendant filed a motion to dismiss the information charging a violation of V & TL §1192(4) on sufficiency grounds. The information charging said count was stated to be based both upon complainant Police Officer Scott Lewis' personal knowledge and upon information and belief, with the source for same being a supporting deposition of Police Officer Christopher Weiner.

ISSUE:
Did the facts as elicited produce enough evidence to survive the defendant's motion for a directed verdict of not guilty?

HOLDING:
No. The allegation/information failed to support every element of the offense charged and the defendant's motion there under must be granted; and the case dismissed.

The gravamen of the offense of Vehicle and Traffic Law §1192(4) is that the defendant's operation of a motor vehicle was impaired by reason of the ingestion of a substance listed in Public Health Law §3306. (*See People* v. *Rose*, 8 Misc 3d 184 [Nassau Dist Ct 2005]; *People* v. *Kahn*, 160 Misc 2d 594 [Nassau Dist Ct 1994]). A person is [*2]impaired by a drug when that person's use of a drug has actually impaired, to any extent, the physical and mental abilities which that person is expected to possess in order to operate a vehicle as a reasonable and prudent driver. (*See People* v. *Kahn*, *supra*; *cf. People* v. *Cruz*, 48 NY2d 419 [1979], app dsmd 446 US 901 [1980]). Assuming, *arguendo*, that the "weed" the within defendant admits to having smoked is marihuana, the Court finds that the information *sub judice* is nonetheless insufficient pursuant to CPL 100.40(1) and 100.15. The information fails to provide a non-hearsay factual basis establishing that the defendant's ability to operate a motor vehicle was impaired by the ingestion of a drug. The only allegation as to the nature of defendant's operation was that she was speeding. Furthermore, there are no allegations that the complainant police officer was trained as a Drug Recognition Expert and no laboratory report was obtained. As such, the information fails to support every element of the offense charged and must therefore be dismissed.

By reason of the foregoing, the remainder of the defendant's omnibus motion is denied as moot. Upon issuance of the accompanying order, the Court shall furnish the defendant with notice pursuant to 22 NYCRR §200.40.