

People v Ameden

2006 NY Slip Op 30152(U)

January 31, 2006

Supreme Court, Suffolk County

Docket Number: 0001830/2005

Judge: Robert W. Doyle

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SUPREME COURT-STATE OF NEW YORK
CRIMINAL TERM, SUFFOLK COUNTY

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATES: 11-16-05
11-30-05
RELIEF: OMNIBUS

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MARCUS AMEDEN,
Defendant.
_____ X

THOMAS J. SPOTA, SUFFOLK COUNTY DISTRICT ATTORNEY
By: Elena Tomaro, Esq.
200 Center Drive
Riverhead, New York 11901

DEFENDANT'S ATTY:
CHRISTOPHER J. CASSAR, ESQ.
13 East Carver Street
Huntington, New York 11743

Defendant, Marcus Ameden, charged in this indictment with two counts of Burglary in the Second Degree and one count of Resisting Arrest has moved, in two separate Notices of Motion, for omnibus relief and for suppression of certain items of evidence. The People have submitted affirmations in opposition to both of the motions and provided the Court with a transcript of the proceedings before the Grand Jury which resulted in this indictment. By this single decision, the Court will decide both of the applications.

The Court has inspected the minutes of the Grand Jury proceedings and finds the evidence legally sufficient to support the charges contained in the indictment (People v. Jennings, 69 NY2d 103). The Court denies that aspect of the motion which was for release of the Grand Jury minutes to defendant. There is no basis for their release and the Court does not require the assistance of defendant in determining the motion (CPL 210.30 [3]).

Defendant's request for dismissal of the indictment upon the ground that the Assistant District Attorney who presented this case to the Grand Jury failed to properly instruct the Grand Jury is denied. The instructions to the Grand Jury were complete and proper under the circumstances. The Court further finds that there was a quorum present during the Grand Jury proceedings that resulted in this indictment and that at least twelve members of the Grand Jury voted to return this indictment.

Finally, the Court finds that the indictment adequately apprises defendant of the nature of the charges against and the conduct which underlies the accusation to allow him to prepare and conduct his defense.

For all of these reasons, the motion by defendant seeking dismissal of the indictment is in all respects denied.

Defendant also seeks to suppress all physical evidence as well as any statements made by defendant based upon the assertion by defendant that he was arrested without probable cause. Initially, the Court must determine whether defendant has alleged a sufficient factual basis in order to require that a suppression hearing be held in order to resolve the issues raised by him. CPL 710.60 provides the procedural framework for determining whether a hearing is necessary. The Court may summarily deny the motion without conducting a hearing if the motion papers do not allege a ground constituting a legal basis for the motion or if the sworn allegations of fact set forth in defendant's motion papers "do not allege a ground constituting legal basis for the motion" (CPL 710.60 subd 3 [a]). If, however, the Court does not either summarily deny or grant the motion then "it must conduct a hearing and make findings of fact essential to the determination thereof" (CPL 710.60 subd 4). As the Court of Appeals has held, "(i)t is fundamental that a motion may be decided without a hearing unless the papers submitted raise a factual dispute on a material point which must be resolved before the court can decide the legal issue" (People v. Gruden, 42 NY2d 214, 215, 397 NYS2d 704). The determination of whether sufficient facts have been alleged is not an easy task. "Courts often struggle ...with the threshold determination whether assertions in defendant's motion papers are factual or 'merely legal conclusions' " (People v. Mendoza, 82 NY2d 415, 426, 604 NYS2d 922).

Here, defendant has offered only minimal facts in support of this request for a Mapp/Dunaway hearing, and those facts are insufficient to entitle him to a hearing on the issue of whether there was probable cause to arrest him. Moreover, the affidavit of defendant, which is attached to his motion papers, is unsigned and not sworn.

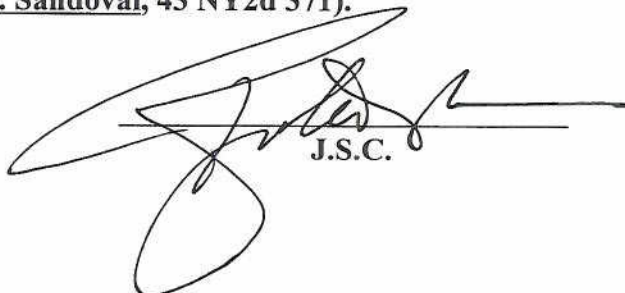
Accordingly, the application by defendant for an order suppressing evidence based upon the lack of probable cause to arrest him is denied.

To the extent that defendant seeks to suppress identification testimony pursuant to CPL 710.30 upon the ground that the People's notice lacks specificity, that application is denied. Defendant has not provided the Court with the allegedly defective notice and the Court cannot, therefore, rule upon the adequacy of said notice.

The Court will conduct a hearing immediately prior to trial to determine the admissibility of any statements made by defendant to law enforcement personnel.

Finally, defendant's application for an order precluding the prosecutor from cross examining defendant, should he testify at trial, regarding any prior criminal convictions or any prior criminal or immoral acts is granted to the extent that a hearing shall be held immediately prior to trial to determine the scope of such cross examination should defendant choose to testify (*see, People v. Sandoval*, 43 NY2d 371).

Dated: JANUARY 31, 2006



J.S.C.

SUPREME COURT-STATE OF NEW YORK
CRIMINAL TERM, SUFFOLK COUNTY

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE: 11/14/06
RELIEF: OMNIBUS

X
THE PEOPLE OF THE STATE OF NEW YORK,

THOMAS J. SPOTA, SUFFOLK COUNTY DISTRICT ATTORNEY
By: Elena Tomaro, Esq.
200 Center Drive
Riverhead, New York 11901

-against-

EDMUND BECKETT,

DEFENDANT'S ATTY:
SUFFOLK COUNTY LEGAL AID
300 Center Drive
Riverhead, New York 11901

Defendant.

X

Defendant Edmund Beckett, charged with one count of Burglary in the Second Degree, one count of Burglary in the Third Degree and one count of Unlawful Possession of Marijuana, has moved for omnibus pretrial relief. The People have submitted an affirmation in opposition to the motion and have provided the Court with a copy of the minutes of the Grand Jury proceedings that resulted in this indictment.

The Court has inspected the minutes of the Grand Jury proceedings and finds the evidence legally sufficient to support the charges contained in the indictment (People v. Jennings, 69 NY2d 103). There is no basis for disclosure of the Grand Jury minutes to defendant and that application is denied.

Defendant's application for an order requiring the People to provide a bill of particulars and discovery is granted to the extent that the People have provided defendant with a bill of particulars and numerous items of discovery.

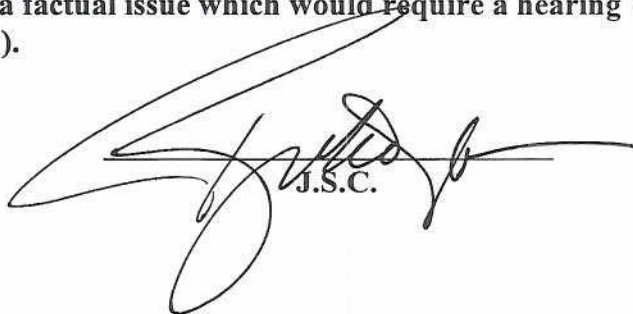
Defendant's request for an order limiting the cross examination of defendant, should he testify at trial, regarding any prior criminal acts or any violent, immoral or vicious acts or conduct he may have committed is granted solely to the extent that a hearing shall be held prior to trial to determine the scope and limits of any cross examination of defendant should he testify at trial.

Defendant's application for the disclosure of all exculpatory material is granted solely to the extent that the People represent that they are aware of their continuing obligation to provide defendant with exculpatory material pursuant to Brady v. Maryland (373 US 83). The People also acknowledge their obligation to provide "Rosario" material (see, People v. Rosario, 9 NY 2d 286) at the appropriate time.

Defendant's application to suppress testimony regarding any out of court identifications of defendant as well as an in court identification of defendant is granted to the extent that a hearing shall be held immediately prior to trial to determine whether such testimony will be permitted. In an affidavit in support of his motion, defendant contends that after his arrest, he was handcuffed and placed in the back of a police vehicle at which time an individual was brought over to identify defendant. Defendant contends that this procedure was unduly suggestive and that any testimony by this individual regarding this identification should be suppressed. Defendant also contends that by virtue of this tainted procedure, an in court identification of defendant by this individual should also be suppressed. Based upon these sworn factual allegations, a pre-trial hearing will be held to determine whether the procedures utilized by the police in this instance were unduly suggestive or whether the identification of defendant was suggested.

With regard to defendant's request for a hearing pursuant to People v. Huntley (15 NY2d 72, 255 NYS2d 838) to determine the voluntariness of any statements made by defendant to law enforcement personnel, that application is granted to the extent that a hearing shall be held prior to trial to determine whether statements given by defendant were voluntary within the meaning of CPL 60.45. Insofar as defendant seeks to have a hearing to determine the legality of his arrest or to determine whether items of physical evidence should be suppressed, that application is denied. Defendant, in support of his request for these hearings, has not raised a factual issue which would require a hearing as to these issues (see, CPL 710.60 subd 3 [b]).

Dated: JANUARY 31, 2006



J.S.C.