

People v Rios

2007 NY Slip Op 32172(U)

July 16, 2007

Suffolk County Ct

Docket Number: 0000206/2007

Judge: James C. Hudson

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

County Court of the County of Suffolk
Part 7 - State of New York

PRESENT:

Hon. JAMES HUDSON

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ANTONIO RIOS,

Defendant.

ORIG. RETURN DATE: 05/29/07

FINAL SUBMIT DATE: 06/14/07

PLTF'S/PET'S ATTY:

HON. THOMAS J. SPOTA

Suffolk County District Attorney

By: MARGARET A. FARRELL, ESQ.

200 Center Drive

Riverhead, New York 11901

DEFT'S/RESP'S ATTY:

REYNOLDS, CARONIA, GIANELLI, HAGNEY,

LA PINTA & HARGRAVES, LLP

By: PAUL GIANELLI, ESQ.

35 Arkay Drive

P.O. Box 11177

Hauppauge, New York 11788

Upon the following papers numbered 1 to 17 read on this motion for omnibus relief _____
Notice of Motion and supporting papers 1-11; Affirmation/affidavit in opposition and supporting papers 12-15;
Affirmation/affidavit in reply and supporting papers 16-17; Other _____; (and after hearing counsel in support of and
opposed to the motion) it is,

Before the Court is an omnibus motion by the defendant requesting several forms of relief.
The People consented in part and opposed in part. After careful consideration it is hereby:

ORDERED, that defendant's application to dismiss the indictment due to a defective Grand
Jury presentation is denied; and it is further

ORDERED, that defendant's application for the disclosure of the Grand Jury minutes for
their review is denied; and it is further

ORDERED, that the defendant's application to suppress his oral and/or written statement
to the police is granted to the extent that the Court shall conduct a hearing prior to trial to determine its
admissibility, and it is further

ORDERED, that the defendant's application for a hearing to determine whether the People
may introduce the defendant's prior uncharged criminal, vicious or immoral conduct if the defendant
testifies at trial is granted. A hearing on the matter will be held prior to trial; and it is further

PEOPLE V. RIOS
INDICTMENT NO. 00206B-2007

ORDERED, that the defendant's application for disclosure of exculpatory materials is granted to the extent that the People have responded that they have no present knowledge of the existence of such materials and have acknowledged their continuing obligation to provide such materials; and it is further

ORDERED, that the defendant's application for the disclosure of *Rosario* materials is granted to the extent that the People shall provide such materials in accordance to CPL 240.45; and it is further

ORDERED, that the defendant's application for a hearing to determine whether there was probable cause for his arrest is granted and will be scheduled prior to trial; and it is further

ORDERED, that the defendant's application to suppress the physical evidence in this case is granted to the extent that a hearing on the matter will be scheduled prior to trial; and it is further

ORDERED, that the defendant's application to have a separate trial from the co-defendant is granted, and it is further

ORDERED, that the defendant's request for a Bill of Particulars is denied.

The defendant moved to dismiss the indictment on the grounds that the evidence before the Grand Jury was insufficient to establish the offenses charged (CPL § 210.20[1][b]), and that the Grand Jury proceedings were legally defective (CPL § 210.20[1][c] and 210.35[5]). The People did not oppose an *in camera* inspection of the Grand Jury minutes.

The Court reviewed the Grand Jury minutes and finds that the evidence presented to the Grand Jury was legally sufficient to sustain the indictment and that the Grand Jury was properly instructed on the law (*People v. Mayo*, 36 N.Y.2d 1002, 374 N.Y.S.2d 609 [1975]).

The defendant also moved to have the Grand Jury minutes released to them so that they may more effectively represent their client. This application is denied. Under Criminal Procedural Law section 190.25(4) Grand Jury proceedings are secret. In order to overcome this secrecy the moving party must demonstrate, by factual presentation, why and to what extent he requires the minutes of the Grand Jury (*In the Matter of the District Attorney of Suffolk County*, 86 A.D.2d 294, 449 N.Y.S.2d 1004 [2d Dept., 1982]; *Ruggiero v. Fahey*, 103 A.D.2d 65, 478 N.Y.S.2d 337 [2d Dept., 1984]); and the reason for the disclosure must be to such an extent that the public interest in disclosure must outweigh the interest of secrecy (*People v. Di Napoli*, 27 N.Y.2d 229, 316 N.Y.S.2d 622 [1970]). The defendant has failed to demonstrate a need sufficient to overcome the presumption of confidentiality.

The defendant motioned for a hearing to suppress his oral and/or written statements to law enforcement officials due to the voluntariness of the statements. The People did not oppose a hearing on

PEOPLE V. RIOS
INDICTMENT NO. 00206B-2007

this matter. Therefore, the Court will hold a *Huntley* hearing pursuant to *People v. Huntley* (15 N.Y.2d 72, 255 N.Y.S.2d 838, 843 [1965]) to determine the admissibility of the defendant's statements.

Defendant's motion for a *Sandoval* hearing was unopposed by the people. Accordingly, a hearing will be held prior to trial pursuant to *People v. Sandoval* (34 N.Y.2d 371, 357 N.Y.S.2d 849 [1974]) to determine whether any of the defendant's prior uncharged criminal, vicious or immoral conduct may be admissible if the defendant testifies at trial.

The defendant also requests the disclosure of any exculpatory materials pursuant to *Brady v. Maryland* (373 U.S. 83, 83 S.Ct. 1194 [1963]). The defendant's application is granted to the extent that the People have stated in their answer that they do not possess any *Brady* material and have acknowledged their continuing obligation to provide the defendant with such materials.

Similarly the People have also acknowledged their duty to disclose *Rosario* material (*People v. Rosario*, 9 N.Y.2d 286, 213 N.Y.S.2d 448 [1961]) at the appropriate time pursuant to CPL 240.45.

The defense challenged the legal basis for the defendant's arrest and motioned the Court to suppress the evidence seized in this case by requesting a *Mapp/Dunaway* hearing (*Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 [1961], *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248 [1979]). In *People v. Mendoza* (82 N.Y.2d 415, 604 N.Y.S.2d 922 [1993]), the Court of Appeals stated that hearings are not automatic or generally available for the asking by boilerplate allegations. Rather, the Court is required to review the factual sufficiency of the motion, with reference to the pleadings, the context of the motion and defendant's access to information. In the case at bar the defendant has sworn sufficient facts to warrant a hearing to determine whether there was a probable cause for his arrest and whether the evidence in this case was legally seized. Therefore a *Mapp/Dunaway* hearing shall be held prior to trial.

The defendant also made an application to have his trial severed from the co-defendant, Sonia Orellana, on the grounds of a possible antagonistic defense. The defendant, Antonio Rios, and co-defendant, Sonia Orellana, are jointly charged in count two of the indictment for the crime of Criminal Possession of a Controlled Substance in the First Degree. The indictment alleged that both defendants, "each aiding the other," illegally possessed cocaine. The co-defendant, Sonia Orellana, gave a statement to the police that, "He does what he does, I have a job. I take care of my kids, I'm not home during the day to see what he does. He works, that's what he tells me and he's a big man." The cocaine was found in the house where both defendants reside. The People opposed the application.

The defense argues that if both defendants are tried together, his Sixth Amendment right to confrontation (United States Constitution) may be violated (see *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 [1968]) and that the trial may develop into a "cross-blaming" situation where the defendants have antagonistic defenses. In support of their argument the defense pointed out that the property invoice receipts list both defendants as the possessors of many of the items recovered from the defendants'

PEOPLE V. RIOS
INDICTMENT NO. 00206B-2007

residence and that the People are likely to present a case in which both defendants had a possessory interest in the residence where the drugs and other contraband were found. The defense also argued that Ms. Sonia Orellana's statement also creates an inference that Mr. Rios is often alone in the house where the contraband was ultimately recovered and that Ms. Orellana is not home enough to be involved in any illicit activity. The defense further cites *Cruz v. New York* (481 U.S. 186; 107 S.Ct. 1714 [1987]) in which the Supreme Court held that "[W]here a nontestifying codefendant's confession incriminating the defendant is not directly admissible against the defendant, the Confrontation Clause bars its admission at their joint trial, even if the jury is instructed not to consider it against the defendant, and even if the defendant's own confession is admitted against him" (supra at 193). The People argued that the co-defendant's cases should not be severed because they do not intend to introduce Ms. Orellana's statement as part of their direct case, thereby eliminating any Sixth Amendment Rights issues. The People also argued that the defendant failed to show how the defenses are antagonistic.

"In all cases a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses" (*People v. Mahboubian*, 74 N.Y.2d 174, 544 N.Y.S.2d 769 [1989]). Severance is at the discretion of the trial judge, and the judge's ruling will ordinarily not be disturbed (*People v. Cruz*, 66 N.Y.2d 61, 495 N.Y.S.2d 14 [1985], *revd on other grounds and remanded*, 481 U.S. 186, *on remand*, 70 NY2d 733). In *Mahboubian*, the Court of Appeals set forth a two-part test for determining whether severance is required, stating that "severance is compelled where the core of each defense is in irreconcilable conflict with the other and where there is a significant danger, as both defenses are portrayed to the trial court, that the conflict alone would lead the jury to infer defendant's guilt" (*Id.*, at 184). In the case at bar the defense has satisfied both parts of the severance test. As the defense pointed out in their reply, even if the People did not introduce Ms. Orellana's statement in their direct case, nothing precludes Ms. Orellana from taking the stand on her own behalf and making a similar statement or being confronted with it on cross-examination. If the jury were to accept Ms. Orellana's defense then there is a significant danger that the jury would infer Mr. Rios' guilt based upon Ms. Orellana's defense. Such prejudice can be avoided with separate trials. Therefore, defendant's application for separate trials is granted.

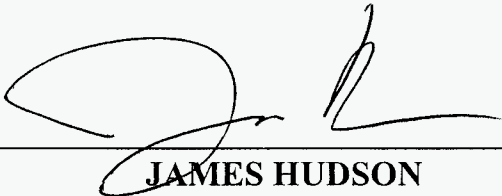
The defendant's application for a Bill of Particulars is denied. CPL 200.95(5) requires the Court to order the prosecutor to comply with a request for a Bill of Particulars if the items of factual information requested are (1) authorized to be included in a Bill of Particulars, and that (2) such information is necessary to enable the defendant to prepare or conduct his defense. The purpose of a Bill of Particulars is to clarify the pleadings; it is not a discovery device (*People v. Davis*, 41 N.Y.2d 678, 394 N.Y.S.2d 865 [1977]). The People are not required to include in a Bill of Particulars (1) matters of evidence relating to how the people intend to prove the elements of the crime, or (2) how the People intend to prove any item of factual information included in the bill of particulars (CPL 200.95); however, a defendant has the right to be informed of the conduct which forms the basis for the accusation in order to prepare a defense (*People v. Fitzgerald*, 45 N.Y.2d 574, 412 N.Y.S.2d 102 [1978]). In the case at bar the defense included a request for a Bill of Particulars in their omnibus motion. The People opposed the

PEOPLE V. RIOS
INDICTMENT NO. 00206B-2007

defendant's request. The defendant did not oppose the People's response in their reply. In addition to the indictment, the defense has been provided a copy of the felony complaint, copies of photographs, and copies of the search warrant applications. The defendant has been sufficiently informed of the conduct which forms the basis for the accusations.

This constitutes the decision and order of the Court.

Dated: Riverhead, New York
July 16, 2007



JAMES HUDSON
J.C.C.