

People v Beauford

2007 NY Slip Op 33144(U)

September 26, 2007

Supreme Court, Suffolk County

Docket Number: 0001051/2007

Judge: James C. Hudson

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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-

KERIAM BEAUFORD,

Defendant.

ORIG. RETURN DATE: 09/13/07

FINAL SUBMIT DATE: 09/21/07

PLTF'S/PET'S ATTY:

HON. THOMAS J. SPOTA
Suffolk County District Attorney
By: RYAN HUNTER, ESQ.
200 Center Drive
Riverhead, New York 11901

DEFT'S/RESP'S ATTY:

LAW OFFICE OF CRAIG E. MCELWEE
152 W. Hoffman Avenue - Suite 6
Lindenhurst, New York 11757

Upon the following papers numbered 1 to 9 read on this motion for omnibus relief
Notice of Motion and supporting papers 1-3 ; Affirmation/affidavit in opposition and supporting papers 4-7 ;
Affirmation/affidavit in reply and supporting papers 8-9 ; 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 the defendant's application for a hearing to determine whether there was
probable cause for his arrest is denied; and it is further

ORDERED, that the defendant's application to suppress the physical evidence in this case
is denied; and it is further

ORDERED, that the defendant's application to suppress his oral and/or written statement to
the police is denied as moot; 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

ORDERED, that should the People intend to introduce any prior conviction, uncharged crime
or bad acts by the defendant in their case-in-chief, the People are directed to file a motion *in limine* prior
to trial so that a hearing may be held on the matter; and it is further

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The defense next moved to suppress any statements made by the defendant to law enforcement officials. The People answered that no statements were taken from the defendant by law enforcement officials. Since there are no statements, defendant's motion for a *Huntley* hearing is denied as moot (CPL 710.30(1), *People v. Paredes* 166 A.D.2d 677, 561 N.Y.S.2d 267 [2d Dept., 1990], *lv. app. denied* 76 N.Y.2d 1023, 565 N.Y.S.2d 774 [1990]).

The People consented to the defendant's request for a *Sandoval* hearing (*People v. Sandoval*, 34 N.Y.2d 371 [1974]) to determine whether the defendant has any prior uncharged criminal, vicious or immoral conduct that may be admissible if the defendant testifies at trial. Therefore, a *Sandoval* hearing shall be held prior to trial.

The People are also directed to file a motion *in limine* prior to trial should they intend to introduce any prior conviction, uncharged crime or bad acts by the defendant in their case-in-chief so that a hearing may be held to determine its admissibility as delineated in *People v. Molineux* (168 N.Y. 264 [1901]) and *People v. Ventimiglia* (52 N.Y.2d 530, 439 N.Y.S.2d 96 [1981]).

The defendant also request 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.

The defendant requested discovery pursuant to CPL 240.20. The People had previously responded to the defendant's request and the defendant's reply did not contest the sufficiency of the People's answer. Therefore, it seems that the People have fully complied with the defendant's request. Accordingly, defendant's application is denied as moot.

Similarly, the defendant motioned for a Court order directing the People to furnish them with a bill of particulars. The People responded that they have provided the defendant with the felony complaint which sufficiently informed the defendant of the conduct "which is the subject of the charges." (*People v. Skolnik*, 135 Misc.2d 964, 517 N.Y.S.2d 411 [Albany County Court, 1987]; *People v. Smith*, 103 A.D.2d 859, 477 N.Y.S.2d 417 [3d Dept., 1984]). The defendant's reply did not contest the sufficiency of the People's response. Therefore, it seems that the People have fully complied with the defendant's request. Accordingly, defendant's application is denied as moot.

The defendant's application for an audibility hearing to determine the audibility and relevance of an audio or video recording is denied as the People have stated in their answer that they do not intend to offer any audio recordings into evidence.

The defendant also made a request to suppress the identification testimony in this case. The defendant was arrested on March 29, 2007, for allegedly selling illegal drugs to undercover police officers

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on February 15, 2007 and February 17, 2007. The People did not give any indication that an identification procedure was used in the arrest of the defendant in the CPL 710.30 notice or in the felony complaint that was provided to the defendant. In fact, the defense pointed out that the People did not even give notice of a “confirmation” identification in the CPL 710.30 notice.

The People responded that CPL 710.30 notice was not required in the case at bar because there was never a police-arranged identification procedure used. The People indicated that they intend to offer independent, in-court identification of the defendant through the testimony of the undercover officers who were present at each sale. Undercover operations, the People argued, are treated differently than civilian witnesses based on historical precedent. The People failed to cite a source to support this position.

While the Courts recognize proper police confirmation procedures and excludes them from CPL 710.30 notice requirements (*People v. Morales*, 37 N.Y.2d 262; 372 N.Y.S.2d 25 [1975]—a follow-up station house show-up identification of a suspect by a trained and experienced undercover narcotics officer six hours after a buy-and-bust of the suspect was not unduly suggestive; *People v. Wharton*, 74 N.Y.2d 921, 550 N.Y.S.2d 260 [1989]—confirmation by the undercover officer who observed defendant during the face-to-face drug transaction at the station house approximately three hours later did not warrant a *Wade* hearing), the police are not *per se* immune from tainted identification procedures. In *People v. Gordon*, 561 N.Y.S.2d 903, 76 N.Y.2d 595 (1990) and *People v. Waring*, 183 A.D.2d 271, 590 N.Y.S.2d 506 (2d Dept., 1992), both cases involving undercover drug sales, the Courts have made it clear that there is no “trained officer exception” to tainted identification procedures. In *Gordon supra* at 600, a 10-day lapse between the first buy and the second transaction with an undercover police officer, followed by a highly suggestive custodial show-up, was not an integral police procedure and requires the necessary protections affecting identification procedures. In *Waring supra*, where the appellant's identity was suggested by other officers and a viewing of a photograph after the first sale, the court found the photographic viewings were not confirmatory in nature, but were employed to aid in identifying appellant and thus were tainted.

In the case at bar the People contend that at the time of the defendant's arrest the arresting officer “confirmed” that the subject being placed under arrest was the defendant and that the defendant was “identified” prior to his arrest and that the viewing of the defendant was confirmatory. The People, however, never explained how the arresting officer “confirmed” that the subject he arrested was the defendant or how the defendant was “identified” prior to his arrest or the circumstances of the viewing. The Court has no way of determining whether the police identification procedures used in this case are subject to a *Wade* hearing. Therefore, the Court will grant the defendant’s motion to the extent that a *Rodriguez* hearing will be held prior to trial to determine whether the identification procedure used by the police in this case is one for which a suppression hearing is appropriate (see *People v. Rodriguez*, 79 N.Y.2d 445 [1992]).

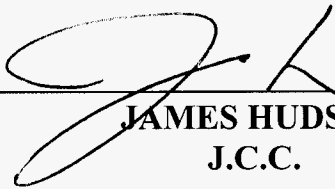
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The People's cross-motion for reciprocal discovery (CPL 240.30) and reciprocal disclosure of *Rosario* material (CPL 240.45(2)(a)) was unopposed, therefore, granted.

The defendant's application to make further pretrial motions in the future is denied absent a showing of unforeseeable circumstances that would necessitate additional motion practice.

This constitutes the decision and order of the Court.

**Dated: Riverhead, New York
September 26, 2007**



**JAMES HUDSON
J.C.C.**