

People v Bonilla

2007 NY Slip Op 33281(U)

October 2, 2007

Supreme Court, Suffolk County

Docket Number: 0001453/2007

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-

LEONIDES BONILLA,

Defendant.

ORIG. RETURN DATE: 09/07/07

FINAL SUBMIT DATE: 09/28/07

PLTF'S/PET'S ATTY:

HON. THOMAS J. SPOTA
Suffolk County District Attorney
By: TRACY HOFFMAN, ESQ.
North County Complex, Bldg. 77
Veterans Memorial Highway
Hauppauge, New York 11788

DEFT'S/RESP'S ATTY:

LAW OFFICES OF EDWARD J. YULE, ESQ.
46 Woodbine Avenue
Northport, New York 11768

Upon the following papers numbered 1 to 12 read on this motion for omnibus relief _____
Notice of Motion and supporting papers 1-5; Affirmation/affidavit in opposition and supporting papers 6-12;
Affirmation/affidavit in reply and supporting papers _____; 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 to dismiss the indictment due to a defective
Grand Jury presentation is denied; and it is further

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 granted to the extent that the Court shall conduct a hearing prior to trial to determine its
admissibility, and it is further

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ORDERED, that the defendant's application to suppress the identification procedure in this case is granted to the extent that a hearing will be held prior to trial to determine the admissibility of the identification testimony in this case; and it is further

ORDERED, that the defendant's application for further discovery is denied as moot; and it is further

ORDERED, that the defendant's application for a Bill of Particulars 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. Prior to this hearing the defense is required to notify the People and the Court of the prior convictions and bad acts that the defendant seeks to exclude and the basis for their exclusion; and it is further

ORDERED, that the defendant's application to make further pretrial motions is denied absent a showing of unforeseeable circumstances or unless the motion is based on information obtained as a direct result of this decision.

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]).

Defendant further motions the Court to suppress physical evidence 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]) to determine whether there was sufficient probable cause for the defendant's arrest and seizure of evidence. Defendant did not submit an affidavit containing sworn allegations of fact (CPL 710.60). Instead, defendant's counsel submitted an affirmation based on information and belief. The source of that information are "inspection of the court records of this case, conversations with the District Attorney's Office, conversations with the defendant and your affirmant's own investigation." The only factual allegation in the affirmation was, "On information and belief, the defendant, Leonides Bonilla, was sleeping in his home on May 5, 2007 when police officers forcibly entered defendant's home and arrested

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him. While this may be true, it does not create an issue of fact as to whether the defendant's Fourth Amendment rights (United States Constitution) have been violated (*see People v. Burton*, 6 N.Y.3d 584, 815 N.Y.S.2d 7 [2006]).

As the Court of Appeals has stated in *People v. Mendoza* (82 N.Y.2d 415, 604 N.Y.S.2d 922 [1993]), 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. Here, defendant's allegation is insufficient to raise an issue as to whether the defendant's right to be free from unreasonable search and seizure has been violated by the police. To accept defendant's allegations (in their present form) would be in derogation of *People v. Mendoza* (82 N.Y.2d 415, 604 N.Y.S.2d 922 [1993]). Such an action on the Court's part would be legislative in nature and a patent violation of the venerable (yet still viable) maxim *expressio unius est exclusio alterius*. Therefore the defendant's application for a hearing to suppress physical evidence is denied.

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 consented to a hearing on 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 next moves to suppress identification testimony. It is alleged that the People failed to serve notice of a police-arranged identification procedure in their CPL 710.30 notice. A review of the notice, however, reveals that the defendant is mistaken. A show-up procedure was disclosed. The defendant further argued that his client informed him that the show-up identification procedure was unduly suggestive. Given the allegations present, the Court will conduct a *Wade* hearing immediately prior to trial pursuant to *United States v. Wade* (388 U.S. 218, 87 S.Ct. 1926 [1967]).

The defendant's omnibus motion requested discovery pursuant to CPL 240.20. The People responded to the defendant's request in their answer and the defendant did not submit a reply contesting 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 to the defendant's demand by supplying a Bill of Particulars in their answer. The defendant did not submit a reply contesting 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.


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The People also consented 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. The application is granted; however, prior to the hearing the defense is required to notify the People and the Court of the prior convictions and bad acts that the defendant seeks to exclude and the basis for their exclusion.

The defendant's application to make further pretrial motions in the future is denied absent a showing of unforeseeable circumstances or unless the motion is based on information obtained as a direct result of this decision.

This constitutes the decision and order of the Court.

Dated: Riverhead, New York
October 2, 2007



JAMES HUDSON
J.C.C.