

People v Anderson

2007 NY Slip Op 34095(U)

October 25, 2007

Suffolk County Ct

Docket Number: 0001669/2007

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-

ROBERT ANDERSON,

Defendant.

ORIG. RETURN DATE: 10/15/07

FINAL SUBMIT DATE: 10/22/07

PLTF'S/PET'S ATTY:

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

DEFT'S/RESP'S ATTY:

ANTHONY M. LA PINTA, ESQ.
35 Arkay Drive, Suite 200
Hauppauge, New York 11788

Upon the following papers numbered 1 to 11 read on this motion for omnibus relief _____
Notice of Motion and supporting papers 1-6; Affirmation/affidavit in opposition and supporting papers 7-9;
Affirmation/affidavit in reply and supporting papers 10-11; 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 to reduce the indictment on the grounds that the
evidence presented to the Grand Jury was not legally sufficient to establish the offenses charged 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

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ORDERED, that the defendant's application for a hearing to determine whether there was probable cause for his arrest 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 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 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

ORDERED, 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 motioned 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 [2 Dept., 1982]; *Ruggiero v. Fahey*, 103 A.D.2d 65, 478 N.Y.S.2d 337 [2 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.

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Defendant also made an application to suppress any statements he made to law enforcement officials. The People consented to a hearing to determine if such statements are admissible at trial. Therefore, a *Huntley* hearing shall be conducted immediately prior to trial to determine the admissibility of defendant's oral and/or written statements pursuant to *People v. Huntley* (15 N.Y.2d 72, 255 N.Y.S.2d 838, 843 [1965] citing *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 [1964]).

The defense next 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]). 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 was based on conversations with the defendant as well as the prosecuting attorney, defense counsel's review of the preliminary discovery items, and an investigation by defense counsel's office.

The affirmation alleges that despite there being no evidence that links the defendant to the shooting, the police focused on him as a suspect because he and the victim were in the midst of a divorce. It is further alleged that the police arrested the defendant in the parking lot of his apartment complex without probable cause and that while handcuffed in the back of the police car he was interrogated without first being advised of his *Miranda* rights.

The Court of Appeals stated in *People v. Mendoza* (82 N.Y.2d 415, 604 N.Y.S.2d 922 [1993]), that suppression 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. The Court finds that under the circumstances of this case the defendant has alleged sufficient facts to sustain a request for a suppression hearing. Therefore a hearing will be held prior to trial to determine whether probable cause existed for the defendant's arrest and to determine the admissibility of the physical evidence seized thereafter.

The People also 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.

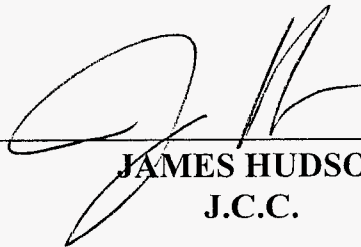
The People are also directed to file a motion *in limine* prior to trial should they intend to introduce any prior conviction, uncharged crime or bad acts by the defendant in their case in chief so that a hearing may be held to determine its admissibility as delineated in *People v. Molineux* (168 N.Y.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

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The defendant's application to make further pretrial motions 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
October 25, 2007**



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