

**People v Madden**

2007 NY Slip Op 34153(U)

December 10, 2007

Supreme Court, Kings County

Docket Number: 0002879/1992

Judge: Ira B. Harkavy

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No.: 2879/92

- against -

DECISION, OPINION  
and ORDER

EDWIN MADDEN,

Defendant.

-----X

PRESENT: IRA B. HARKAVY  
Justice of the Supreme Court

By pro se motion, dated July 3, 2007, defendant Edwin Madden seeks an order renewing trial counsel's motion to dismiss his indictment, pursuant to CPLR § 2221 (e) (2). Defendant argues that his conviction must be vacated and the indictment under which he was prosecuted must be dismissed on the grounds that the indictment was jurisdictionally defective. The gravamen of defendant's argument is that because his name appears in the caption, but not in the enumerated charges of the indictment to which the caption is attached, the court lacked jurisdiction over his person. The District Attorney opposes the motion, and argues that the motion should be denied as untimely and without merit.

By indictment number 2879/92, defendant was charged with one count of murder in the second degree, two counts of attempted murder in the second degree, one count of assault in the first degree, one count of criminal possession of a weapon in the second degree, and one count of criminal possession of a weapon in the third degree. On December 22, 1993, defense counsel filed an omnibus motion for an inspection of the grand jury minutes, and for dismissal or reduction of the indictment pursuant to CPL § 210.30. By a memorandum order dated January

27, 1994, this court denied defendant's motion after an *in camera* inspection of the grand jury minutes.

On November 4, 1994, defendant was convicted by a jury of second-degree murder, attempted second-degree murder, and first-degree assault. On November 16, 1994, defendant was sentenced to prison terms of twenty-five years to life for the murder conviction, eight and one-third to twenty five years consecutive for the attempted murder conviction, and five to fifteen years concurrent for the assault conviction.

On December 9, 1996, the Appellate Division, Second Department, unanimously upheld defendant's conviction on direct appeal. On January 14, 1997, the Court of Appeals denied defendant's application for leave to appeal to that court. On May 11, 1998, the Appellate Division, Second Department, denied defendant's motion for a common law writ of error *coram nobis*. On April 17, 2003, the Court of Appeals denied defendant's application for leave to appeal the denial of defendant's *coram nobis* motion. On October 16, 1998, the Eastern District dismissed defendant's petition for *habeas corpus* review.

By a decision and order dated August 11, 1999, this court denied defendant's first motion to vacate his judgment of conviction, pursuant to CPL § 440.10, and found that defendant had been provided effective assistance of counsel. On February 7, 2000, the Appellate Division, Second Department, denied defendant's application for leave to appeal. Pursuant to a judgment and order dated July 22, 2003, as amended on July 28, 2003, the Eastern District dismissed defendant's resubmitted petition for *habeas corpus* review. By a decision and order dated December 2, 2003, this court denied defendant's second motion to vacate his judgment of

conviction, pursuant to CPL § 440.10, and found that defendant was in a position to raise all of his claims of ineffective assistance of counsel in his prior CPL § 440.10 motion and failed to do so. On March 25, 2005, the Appellate Division, Second Department, denied defendant's application to appeal that order. By a decision and order dated January 17, 2006, this court denied defendant's third motion to vacate his judgment of conviction, pursuant to CPL § 440.10, as procedurally barred and without merit. On March 28, 2006, the Appellate Division, Second Department, denied defendant's application to appeal that order.

Preliminarily, the court notes that although defendant argues that the indictment was jurisdictionally defective because each and every count of the indictment did not literally name "Edwin Madden," the defendant was the sole defendant named in the caption of the indictment and each count of the indictment thereafter referred to the defendant as "the defendant."

Moreover, defendant's motion must be denied because the requested relief is not available pursuant to either CPLR 2221 (d) or (e). CPLR 2221 (d) governs motions to reargue and specifically requires that the motion must be made within 30 days of receipt of the order the party seeks to reargue. It also requires that the party seeking reargument cannot include any matters of fact not offered on the prior motion (*see* CPLR 2221 [d] [2] and [3]). In this case, defendant's original motion to dismiss was filed on December 22, 1993 and denied by an order dated January 27, 1994. Thus, there is no question that the thirty day statutory deadline to move for reargument has long since passed. Further, as the argument made on this motion was not made on the original motion, that argument cannot now be "reargued." CPLR 2221 (e) governs motions to renew and specifies that a motion to renew must be based on either new facts not

presented in the prior motion or a change in the law since the prior motion. In this case, the new motion is not based on any facts that were not known to the defendant at the time of the prior motion, or on any change in the law since the time of the prior motion. Accordingly, even if CPLR 2221 was a potentially appropriate procedural vehicle for relief, the defendant is not entitled to such relief in this instance.

Furthermore, contrary to defendant's claim, there is simply no requirement that each and every count of an indictment must literally refer to the defendant by name. CPL § 200.50 sets forth the requirements for the contents of an indictment. Nothing within CPL § 200.50 requires that each and every count of an indictment must specifically include the defendant's actual name. As the court has already noted, defendant was identified in the caption of the indictment, and was the only defendant named in the caption. The caption applies to the indictment in its entirety and once the defendant was named in the caption, it was sufficient that the remainder of the document referred to him as the defendant (*see* 2 Wharton's Criminal Procedure § 226, at 45 [13<sup>th</sup> ed 1990]; *see also* *People v D'Angelo*, 98 NY2d 733, 734-735 [2002]; *People v Di Noia*, 105 AD2d 799, 800 [1984], *cert denied* 471 US 1022 [1985]; *People v Iannone*, 45 NY2d 589, 592 [1978]; *People v Fitzgerald*, 45 NY2d 574 [1978], *revg* *People v Fitzgerald*, 62 AD2d 885 [1978]; *People v Brothers*, 66 AD2d 954, 955 [1978]). In this case, the caption of the indictment specifically named Edwin Madden as the sole defendant, and the use of "defendant" in the body of the indictment clearly refers to Edwin Madden.

Defendants reliance upon *People v Lopez*, 4 NY3d 686 (2005), is misplaced. In *Lopez*, there were two defendants and only one of them was clearly specified in the body of the

indictment. Under those circumstances, the other defendant was simply not charged with any crime. In this case, the sole person named in the caption of the indictment was Edwin Madden, and the use of "defendant" in the body of the indictment cannot refer to anyone but Edwin Madden.

Finally, even if the law required that each count of the indictment literally specify Edwin Madden by name, such an error would not warrant the vacatur a judgment of conviction. CPL § 210.25 provides that a court may dismiss an indictment if the indictment does not substantially conform to the requirements of Article 200 of the CPL. In this case, the failure to specifically name Edwin Madden in each and every count of the indictment simply does not rise to the level of substantial nonconformity with the requirements of Article 200, when it is clear that the use of "defendant" in the body of the indictment refers to Edwin Madden.

Accordingly, the defendant's motion is denied.

This constitutes the Decision, Opinion and Order of this Court.

Dated: December 10, 2007



E N T E R,

IRA B. HARKAVY  
J.S.C.