

People v Cook

2007 NY Slip Op 34325(U)

December 10, 2007

Suffolk County Ct

Docket Number: 0001940/2007

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-

LAQUAN COOK,

Defendant.

ORIG. RETURN DATE: 09/05/07

FINAL SUBMIT DATE: 11/14/07

PLTF'S/PET'S ATTY:

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

DEFT'S/RESP'S ATTY:

FOLEY, GRIFFIN, JACOBSON & FARIA, LLP
By: BRIAN J. GRIFFIN, ESQ.
666 Old Country Road - Suite 305
Garden City, New York 11530

Upon the following papers numbered 1 to 10 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 8-10; Other _____; (and after hearing counsel in support of and
opposed to the motion) it is,

ORDERED that the decision dated November 19, 2007 is vacated.

This Court previously issued a decision dated November 19, 2007, granting the defendant various omnibus relief based on the presumption that the People did not submit an answer in response to the defendant's omnibus motion. Since the issuance of this decision it became apparent that there was confusion as to the motion schedule originally set by the Court. The Court has now received the People's answer and the defendant's reply. In light of the strong public policy of deciding cases on the merits (*City Line Auto Mall, Inc. v. Citicorp Leasing, Inc.*, 2007 NY Slip Op 9194 [2 Dept., 2007]), this court hereby vacates its November 19, 2007 decision in its entirety and replaces it with the following decision.

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

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

PEOPLE V. COOK
INDICTMENT NO. 01940B-2007

ORDERED, the defendant's application for Bill of Particulars is denied as moot; 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 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 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

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 People's cross-motion for reciprocal discovery is granted; 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'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.

PEOPLE V. COOK
INDICTMENT NO. 01940B-2007

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 support of his application the defense counsel submitted an affirmation based on information and belief. The source of that information being "interviews with the defendant, conversations with the Assistant District Attorney, discovery filed by the Assistant District Attorney, records on file in the Criminal Court, County of Suffolk, and independent investigations carried out and conducted under the supervision of the affirmitant and his staff." The application only stated "the defendant contends that the police arrested the defendant without probable cause and forcibly took samples from his hands, which the prosecution allege contains gunpowder residue. Further the police unlawfully seized a firearm which the defendant believes the prosecution intends to introduce at trial." These conclusory allegations would ordinarily be insufficient to support a request for a suppression hearing; however in the defendant's reply the defense pointed out that the People's answer indicated that one of the bases for the defendant's arrest was that he was "arrested at the scene and was identified by the victim in a show-up as a person who fired a semi-automatic weapon at him" (People's answer page 5, 2nd paragraph). This allegation seems to contradict the Police Arraignment Cover Sheet which indicated that another person, "Dontel Williams," was the shooter in this crime.

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 assessing the adequacy of a motion to suppress tangible evidence, a defendant is entitled to rely on the People's proof to demonstrate standing (*People v. Burton*, 6 N.Y.3d 584, 815 N.Y.S.2d 7 [2006] citing *People v. Ramirez-Portoreal*, 88 N.Y.2d 99, 643 N.Y.S.2d 502 [1996]; *People v. Whitfield*, 81 N.Y.2d 904, 597 N.Y.S.2d 641 [1993]; *People v. Wesley*, 73 N.Y.2d 351, 540 N.Y.S.2d 757 [1989]; *People v. Gonzalez*, 68 N.Y.2d 950, 510 N.Y.S.2d 86 [1986]; *People v. Gomez*, 67 N.Y.2d 843, 501 N.Y.S.2d 650 [1986]). The necessary allegations of fact may be obtained from statements made by law enforcement officials in an accusatory instrument (*People v. Gomez* at 844). Witnesses for the People, including police officers, are among the "other persons" (CPL 710.60 [1]) whose factual assertions may be used in a motion to suppress (*People v. Ramirez-Portoreal*, at 105-106, 111-112; *People v. Gonzalez* at 951). Since the People allege that part of the probable cause for the defendant's arrest was because he was identified as the shooter and the police report appears to contradict this allegation, the defense has raised an issue of fact that sufficiently calls into question the basis of the defendant's arrest and whether his Fourth Amendment rights (United States Constitution) have been violated; therefore the Court will conduct a hearing prior to trial to determine whether there was probable cause for the defendant's arrest and the seizure of evidence.

PEOPLE V. COOK
INDICTMENT NO. 01940B-2007

The defendant next moved for the suppression of identification testimony. The People consented to the application, therefore, the Court will conduct a *Wade* hearing prior to trial pursuant to *United States v. Wade* (388 U.S. 218, 87 S.Ct. 1926 [1967]).


The People also consented to the defendant's application for a *Sandoval* hearing (*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; therefore a hearing on the matter will be held immediately prior to trial.

The People are further 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 People's cross-motion for reciprocal discovery (CPL 240.30) was unopposed, therefore it is granted.

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
December 10, 2007



JAMES HUDSON
J.C.C.