

People v Daniels

2007 NY Slip Op 34326(U)

December 11, 2007

Suffolk County Ct

Docket Number: 0002016/2007

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

ORIG. RETURN DATE: 11/27/07

FINAL SUBMIT DATE: 11/27/07

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

PLTF'S/PET'S ATTY:

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

-against-

CAL DANIELS,

Defendant.

DEFT'S/RESP'S ATTY:

CRAIG E. MCELWEE, ESQ.
152 W. Hoffman Ave., Suite 6
Lindenhurst, New York 11757

Upon the following papers numbered 1 to 6 read on this motion _____
Notice of Motion and supporting papers _____; Affirmation/affidavit in opposition and supporting papers _____;
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 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

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 the admissibility of
the identification testimony in this case; and it is further

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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 the defendant's application for disclosure of exculpatory materials is granted to the extent that the People have not responded to this request in their reply and are therefore reminded of their continuing obligation to provide such materials; and it is further

ORDERED, that defendant's request for *Rosario* materials (*People v. Rosario*, 9 N.Y.2d 286, 213 N.Y.S.2d 448 [1961]) is granted to the extent that the People shall provide such materials in accordance with CPL 240.45; and it is further

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

ORDERED, that defendant's application for Bill of Particulars is denied as moot; and it is further

ORDERED, that 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 for 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. The defendant did not submit an affidavit containing sworn allegations of fact (CPL 710.60), instead defense counsel submitted an affirmation based on information and belief, the source being court papers, conversations with Mr. Daniels, and information provided by the prosecutor's office. In the affirmation the defense merely states "[the] arrest was based on incidents which allegedly occurred prior to the date of arrest," and "[t]he defendant was never made aware of the manner in which the 'identification' of Cal Daniels [himself] was obtained nor was defendant given any notice of any identification procedure employed."

The Court of Appeals stated in *People v. Mendoza* (82 N.Y.2d 415, 604 N.Y.S.2d 922 [1993]) and *People v. Bryant* (8 N.Y.3d 530, 869 N.E.2d 7 [2007]), 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 the

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defendant's access to information. The lack of facts to support defendant's request for the hearings is fatal to the defendant's application. Therefore the defendant's application for a probable cause hearing and a hearing to suppress evidence is denied.

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]).

Defendant next moves for the suppression of identification testimony. The People consented to a hearing on the confirmatory nature of the identification. 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 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 defendant's request for the disclosure of any exculpatory materials pursuant to *Brady v. Maryland* (373 U.S. 83, 83 S.Ct. 1194 [1963]) is granted to the extent that the People are reminded of their duty to provide the defendant with any exculpatory materials, if they exist, in a timely manner.

The People have also acknowledged their duty to disclose *Rosario* material (*People v. Rosario*, 9 N.Y.2d 286, 213 N.Y.S.2d 448 [1961]) at the appropriate time pursuant to CPL 240.45.

The defendant next 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.

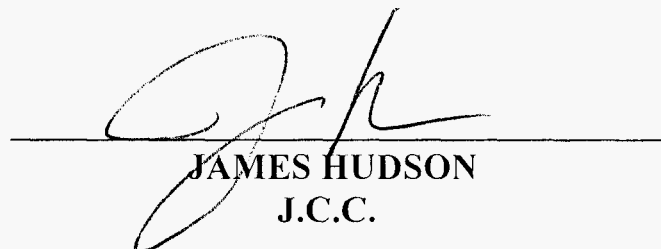
Similarly, the defendant motioned for a Court Order directing the People to furnish them with a Bill of Particulars. The People responded to the defendant's demand by supplying a Bill of Particulars in their answer. The defendant did not submit a reply contesting the sufficiency of the People's answer. 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 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
December 11, 2007**



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