

**People v Johnson**

2007 NY Slip Op 34488(U)

November 13, 2007

Supreme Court, New York County

Docket Number: 3278-05

Judge: Charles H. Solomon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 82

-----X  
THE PEOPLE OF THE STATE OF NEW YORK, :  
 :  
 -against- :  
 :  
 JASON JOHNSON, DEFENDANT :  
-----X

**DECISION AND ORDER**  
INDICTMENT 3278-05

CHARLES H. SOLOMON, J.:

In a motion filed July 17, 2007, defendant moves to dismiss the indictment arguing that several of his constitutional rights have been violated. These allegations grow out of the search of defendant's jail cell at Riker's Island pursuant to a search warrant signed on March 1, 2007 and executed on March 9, 2007. The People filed a response in opposition on August 9, 2007, to which defendant replied on September 20, 2007. Based upon a review of the papers submitted, as well as the court record, for the reasons set forth below, defendant's application is denied in its entirety.

Defendant argues that his right to effective representation of counsel, as well as his right to present a defense, assist in his own defense and his right against self- incrimination were violated in this case. Specifically, it is alleged that the lead detective on the case, Detective Christopher Drew, violated defendant's rights by participating in the search of defendant's cell and by seizing written materials which contained privileged communications between defendant and his attorney. Defendant contends that Detective Drew could not have executed the search warrant without at the same time becoming privy to the contents of these privileged materials. Because of this, defendant argues that his rights were violated and that the indictment must be dismissed. Alternatively, defendant argues that Detective Drew should be precluded from testifying at defendant's trial and should be prevented from having any further involvement in the

case. Defendant also moves to recuse the entire prosecution team and for the reassignment of the case to a "neutral prosecuting body" with a gag order placed on the recused parties.

Defendant's arguments rest on the factual assumption that Detective Drew read privileged materials seized from defendant's cell. Defendant asserts that he was held outside his cell when Detective Drew and others were executing the warrant, and that defendant was able to see that papers and other personal items were being seized. Defendant was not, however, in a position to see what was contained in any of those papers. The People assert in their response that Detective Drew did not read any of the seized materials. Instead, they argue he bagged the materials and submitted them to the Court for the Court's *in camera, ex parte* review. Based on the assertions of the parties, there is no basis to conclude that Detective Drew read any privileged communications between defendant and his counsel. Because defendant's application is premised on this assumption, his motion is denied in its entirety.

In a separate motion dated July 17, 2007, defendant moves for discovery of the affidavit accompanying the warrant which authorized the search of defendant's jail cell. Defendant also moves to controvert the warrant, and asks that the Court suppress any materials seized pursuant to the warrant on the basis that there was no probable cause to issue the warrant. Defendant additionally challenges the warrant on the grounds that it was stale by the time it was executed and that the warrant was overly broad. The People filed a response to defendant's motion on July 18, 2007.


In a decision filed May 22, 2007, the Court granted the People's motion for a protective order concerning this affidavit. The Court adheres to its prior ruling. Discovery of the affidavit in its unredacted form is denied. The Court has reviewed *in camera* the search warrant affidavit

and finds that there was probable cause to issue the search warrant and further, that the affidavit itself is not facially perjurious. People v. Edwards, 95 NY2d 486 (2000); People v. Serrano, 93 NY2d 73 (1999); People v. Traymore, 241 AD2d 226, 230 (1<sup>st</sup> Dept 1998). The Court also finds that the warrant was not stale when it was executed on March 9, 2007. Nor, in this Court's opinion, was it overly broad. Accordingly, defendant's application to suppress items recovered pursuant to the execution of the search warrant is denied.

In a motion filed September 20, 2007, defendant moves to preclude what he characterizes as statement evidence on the ground that the People's notice of their intention to offer these statements was untimely served. The People oppose defendant's motion in a response filed October 24, 2007. The statements at issue include two handwritten letters and one handwritten envelope. The letters are not dated or signed, with one being sent to "Angel" and the other to "A". The envelope contains the name Mr. Angel Vega, #875-04-02033, 11-11 Hazen Street, E. Elmhurst, N.Y., 11370, as the addressee, and was post-marked December 20, 2004, and had a return address of Kevin McGee 4410311359, 1500 Hazen Street, East Elmhurst, N.Y. 11370. Although the People were aware of the letters in 2004, they were unaware of who wrote them. It was only after defendant's cell was searched pursuant to the March 1, 2007 search warrant and after the People received certain documents in May, 2007 from the Court after the Court conducted an *in camera* review of these materials, that the People came to believe that it was defendant who had written these letters. Upon making this determination, the People provided the letters in question to defense counsel pursuant to CPL 240.20(1)(a). The Court notes that Angel Vega was a confidential informant for the police in 2004. The letters and envelope allegedly written by defendant to Mr. Vega were written at a time when defendant was

incarcerated at Riker's Island. These statements, however, are not the type of statements contemplated by CPL 710.30(1)(a) and the People were therefore, not required to serve notice of their intention to offer these statements under that statute. Consequently, defendant's motion to preclude the introduction of these statements at trial is denied.

Dated: November 13, 2007  
New York, New York

  
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CHARLES H. SOLOMON, J.S.C.