

People v Cirino
2007 NY Slip Op 34589(U)
November 15, 2007
Supreme Court, Oneida County
Docket Number: 07-239
Judge: Barry M. Donalty
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STATE OF NEW YORK
SUPREME COURT

ONEIDA COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK =

against =

= Indictment No.

WESLEY MOLINA CIRINO, =

= 07-239

a/k/a "FLACO", =

Defendant =

=====

Motion to Suppress Physical Evidence

APPEARANCES: HONORABLE SCOTT D. MCNAMARA, DISTRICT ATTORNEY
(Laurie Lisi, Esq., of Counsel) for the
People

REBECCA WITTMAN, ESQ., for the Defendant

DONALTY, J.:

DECISION AND ORDER

The Defendant has moved this Court by motion dated September 27, 2007, to suppress any and all items seized by law enforcement during the execution of three search warrants. The first search warrant was issued by Utica City Court Judge John S. Balzano on April 23, 2007 for the entire first floor apartment located at 910 Jay Street in the City of Utica. The second search warrant was issued by Oneida County Court Judge Michael L. Dwyer on April 23, 2007 for clothing, including undergarments, footwear, jackets, bags and personal papers, wallet and/or other physical items located on the person of Wesley Molina Cirino at the time of his arrest. The third search warrant was issued by Judge Dwyer on

May 8, 2007 for four pieces of mail sent by Wesley Molina Cirino.

This Court has been supplied with and reviewed the search warrants, the application of Investigator Anthony Salerno together with the sworn statements of Inv. Salerno, Andreana Mateo, the defendant and Sammy Rivera in support of the warrant for 910 Jay Street; the application of Inv. Steven White together with the sworn statement of Sammy Rivera in support of the warrant for the defendant's clothing and the application of Inv. Anthony Franco, the sworn statements of Inv. Franco and Jerry Scott and the interviews with Manny Ramos, Jerry Scott and Jose Nunez-Ferreira in support of the warrant for the defendant's mail.

The defendant argues that the applications did not provide probable cause authorizing the issuance of the warrants. He claims that all of the evidence seized as a result of the illegal searches must be suppressed.

"In reviewing the validity of a search warrant to determine whether it was supported by probable cause...the critical facts and circumstances for the reviewing Court are those which were made known to the issuing Magistrate at the time the warrant application was determined (People v. Hendricks, 25 NY2d 129, 138: People v. DeLago, 16 NY2d 289, 292 cert. den. 383 US 963; People v. Rainey, 14 NY2d 35, 38-39; People v. Fino, 14 NY2d 160, 163)" People v. Nieves, 36 NY2d 396, 402.

The application of Inv. Salerno provided the following

information to Judge Balzano:

On April 12, 2007, at approximately 9:16 p.m., Officer Thomas Lindsey of the Utica Police Department initiated a vehicle and traffic stop on a red Plymouth Neon operated by Sammy Rivera in the 1100 block of Neilson Avenue in the City of Utica. During the stop, Officer Lindsey was shot and fatally wounded while standing outside of the Neon.

Included as part of the application is the statement of Mr. Rivera who witnessed the shooting and who identified the defendant as the person who shot and killed Officer Lindsey and the statement of the defendant indicating that he resided at an unknown address on Jay Street located in the City of Utica.

Also made a part of the application is the statement of Andreana Mateo who stated that the defendant lives in an apartment in a house on Jay Street with his brother and family.

On April 21, 2007, an anonymous call was received by a citizen informant indicating that blood stained clothing was thrown out at 910 Jay Street and that a blood stained mattress was going to be thrown out. The police were able to retrieve the garbage in front of 910 Jay Street and it included clothing, the blood stained mattress and a bucket, a mop and a rug. Pictures of the blood stained mattress were attached to the application.

On April 14, 2007, Inv. Coromato spoke with Isander Molina, the defendant's brother, and confirmed his address was 910

Jay Street. On April 23, 2007, Inv. Kuhn confirmed from another resident at 910 Jay Street that Isander Molina resided in the first floor apartment at 910 Jay Street.

Based upon the above information, Judge Balzano issued a search warrant authorizing a search of the entire first floor apartment located at 910 Jay Street in the City of Utica.

The defendant alleges that he had a reasonable expectation of privacy in the premises located at 910 Jay Street. In considering the information provided in the defendant's sworn statement, this Court must conclude that the defendant has standing to challenge the sufficiency of the application filed in support of the search warrant for that location.

The search warrant application of Inv. White provided the following information to Judge Dwyer:

On April 12, 2007, at approximately 9:16 p.m., Officer Lindsey initiated a vehicle and traffic stop on a red Plymouth Neon operated by Sammy Rivera on the 1100 block of Neilson Avenue in the City of Utica. During the stop, Officer Lindsey was shot and fatally wounded while standing outside of the Neon. After the shooting, the Neon immediately left the area. At about 9:28 p.m., Officer Stanley Fernald located the red Neon on the 800 block of John Street in the City of Utica. It was occupied buy Noemi Diaz, Acardia Rivera and Sammy Rivera.

Inv. Kopek reported that during his investigation and

inspection of the exterior of the vehicle, he observed substances that resembled human blood, human bone and/or human brain matter on the driver's side front door of the vehicle. Said information was provided in an application for a search warrant before this Court. Based on the information provided, this Court issued a search warrant dated April 13, 2007 for any blood, bodily fluids, trace evidence, hair fibers, DNA evidence, fingerprint evidence, fingernail clippings or scrapings, gun shot residue, etc.

During the course of the investigation, Sammy Rivera was taken into custody and a search of the exterior of his vehicle yielded blood and tissue spatter evidence.

On April 17, 2007, the defendant was arrested based upon an Onondaga County Court warrant. He was remanded to the Onondaga County Jail on a no bail status. On April 21, 2007, Sammy Rivera provided a written statement which has been made a part of this application in which he indicated that he saw the shooting while in the Neon and identified the defendant as the person who murdered Officer Lindsey. The defendant was personally known to Sammy Rivera prior to the shooting.

The personnel at the Onondaga County Jail took possession of all personal effects and clothing of the defendant at the time of his reception into the facility on April 17, 2007, just five days after the murder.

Based upon the above information, Judge Dwyer issued a

search warrant authorizing a search of the defendant's clothing and personal effects that were obtained from his person at the time of his arrest on April 17, 2007.

The search warrant application of Inv. Franco provided the following information to Judge Dwyer:

On April 17, 2007, the defendant was arrested by the Utica Police Department on a drug warrant out of Onondaga County. The defendant had been continuously held at Onondaga County Correctional Facility from April 17, 2007 to May 7, 2007 (the date of the search warrant application). While incarcerated, the defendant spoke with several inmates revealing his knowledge of Officer Lindsey's murder.

During the course of the investigation, Inv. Franco learned that the defendant had threatened other inmates in an attempt to keep them from talking to law enforcement about their conversations with him, as well as stating that if Sammy Rivera were to get out of jail, "he would be got" meaning that he would be killed.

Inmate Jerry Scott contacted law enforcement and was interviewed on several occasions and was deposed on April 24, 2007. The defendant told Scott detailed information relative to the Lindsey homicide. In fact, the information first led Scott to believe that the defendant was present at the scene of the homicide and later to believe that he committed the homicide. The defendant

also told Scott that if Sammy, the driver of the vehicle that was pulled over the night of the murder, got out of jail, he would be killed. Jerry Scott's deposition has been attached and made a part of this application.

Inmate Manuel Ramos' telephone calls were monitored by the Onondaga County Jail and as a result, it was determined that the defendant had also made verbal admissions regarding the homicide to Ramos. Subsequently, Manuel Ramos was interviewed and stated that the defendant told him that the Utica cop homicide was a hit and not a random act and that the defendant's cousin was paid \$4,000 to kill the cop. The interview with Manuel Ramos was detailed in lead sheets which have been attached and made a part of this application.

Inmate Jose Nunez-Ferreira was also interviewed. Nunez-Ferreira stated that he overheard a conversation between Manuel Ramos and the defendant in the TV room at the jail. He also stated that once it was learned that he overheard their conversation, the defendant went to Nunez-Ferreira's cell and took a picture of his family members as well as four pieces of mail containing the addresses of his family members. The defendant then stated that "this will guarantee that you won't talk."

During the investigation, it was learned that the defendant and Ramos are both members of the "Neta" gang which is known for their violence and hatred toward law enforcement. It is

a status symbol for a member of the gang to kill a police officer and this act brings them much respect. Nunez-Ferreira indicated that he believed his belongings that were taken from him could either be in the defendant's possession or in Inmate Raynaldo Garcia's possession.

On May 7, 2007, two letters belonging to Nunez-Ferreira were located in Raynaldo Garcia's cell as well as a phone number associated with Nunez-Ferreira. During the course of the investigation, both Ramos and Nunez-Ferreira were transferred to Elmira Correctional Facility. An attempt was made to speak with Nunez-Ferreira on May 5, 2007 but he refused to speak with officers. Later that day, Ramos indicated to Nunez-Ferreira that if he talked to law enforcement, he would be killed. He did this by taking his finger and making a slashing motion across his neck while looking at Nunez-Ferreira.

Inv. Franco indicated in his application that the defendant presented for mailing four envelopes at the Onondaga County Jail, which were secured by Onondaga County Correctional personnel prior to being deposited in the U.S. mail stream. Inv. Franco opined that, in his experience as a police officer, one making verbal statements concerning his involvement in a crime would be likely to do the same in written communications.

Based upon the above information, Judge Dwyer issued a search warrant authorizing a search of the defendant's mail.

The People object to the suppression of any evidence seized as a result of a search of the defendant's mail. The People argue that the defendant lacks standing to contest the search because he failed to allege a legitimate expectation of privacy in the area from which the item was seized or in the object seized. The People allege that a prisoner loses almost all expectations of privacy when confined and it is clear that the prison officials have a right to control prisoner contacts with the outside world for security reasons.

The People have, however, failed to provide any information from prison officials which outline the rules and regulations set forth by the Correctional Facility with respect to a defendant's expectation of privacy when communicating in writing with others. Therefore, the defendant's motion to suppress the evidence based on the execution of the search warrant to seize the defendant's mail will be considered by this Court.

The information supplied to the issuing Magistrates in each instance was provided, in part, in the form of sworn statements from identified persons. These statements provided ample information supporting the magistrates' determination that probable cause existed sufficient for the issuing of each warrant.

The sworn statement of a named citizen informant can, in and of itself, be grounds to establish probable cause for the issuance of a search warrant. See, People v. Hicks, 38 NY2d 90,

92; People v. McCulloch, 226 AD2d 848, 849; People v. David, 234 AD2d 787, 788; People v. Sullivan, 56 NY2d 378, 384.

"The suppression court properly determined that the Aguilar-Spinelli test does not apply to this situation, where the identity of the citizen informant[s] [were] disclosed to the Magistrate[s] and deposition[s] signed by the informant[s] and based upon personal observation[s] [were] submitted in support of the application[s] for the search warrant[s]." People v. Kirby, 168 AD2d 981.

"The affidavit...was a sworn statement of an identified member of the community attesting to the facts which the affiant had directly and personally observed. Such an affidavit, by an identifiable member of the community, sufficiently supports the issuance of the search warrant." People v. Hicks, supra at 92; see also, People v. Doyle, 222 AD2d 875; People v. Kirby, supra; People v. David, supra.

In this case, the citizen informants were identified in each instance, and the information provided was sworn to and specifically described the informants' observations concerning the investigation. This Court concludes that each of the three warrants challenged by the defendant is supported by such a sworn statement or statements, as well as additional information supplied by the applicant as a result of the police investigation of the murder.

"The sworn statements of private citizens, who report crime in an honest and forth right manner, may, and should be relied upon by the police and the courts as a basis for further action. It is not uncommon to place such heavy reliance upon the role of the citizen informer." People v. Hicks, supra at 94.

This Court concludes upon review of the applications in support of each search warrant, including the depositions of the citizen informants that there existed "information sufficient to support a reasonable belief that evidence of illegal activity would be present at the specific time and place of the search (People v. Bigelow, 66 NY2d 417, 423)" People v. Edwards, 69 NY2d 814, 816; see also, People v. Peterson, 159 AD2d 983.

In interpreting the application in a "common sense and realistic fashion" (United States v. Ventrescia, 380 US 102, 108; see also, People v. P.J. Video, 65 NY2d 566, 571, revd. Sub. nom. New York v. P.J. Video, 475 US 868, on remand 68 NY2d 296) rather than a "hypertechnical manner" (People v. Hanlon, 36 NY2d 549, 559), it is the opinion of this Court that there existed sufficient probable cause for the issuance of the three search warrants.

The foregoing constitutes the opinion, decision and order of this Court.

ENTER.



BARRY M. DONALTY,
ACTING SUPREME COURT JUSTICE

Decided: November 15, 2007