

People v Wehnke

2008 NY Slip Op 32221(U)

August 7, 2008

Rome City Ct

Docket Number: 0044191/2008

Judge: Daniel C. Wilson

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STATE OF NEW YORK

COUNTY OF ONEIDA

ROME CITY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

MEMORANDUM DECISION

vs.

William K. Wehnke,

Defendant.

DOCKET NO. 44191

Michael R. Nolan, Esq., Asst. District Attorney of Oneida County,

for the People,

John G. Leonard, Esq., Attorney for the Defendant.

PRESENT: Hon. Daniel C. Wilson, City Court Judge:

The defendant has moved this court by a motion which was filed with the court on July 17, 2008 and which was duly submitted to the court for decision on July 31, 2008 for an order seeking discovery and inspection of certain listed items, and for relief pursuant to *People*

vs. *Sandoval*, 34 NY 2d 371 (1974)) and *People v. Ventimiglia*, 52 N.Y. 2d 350 (1981) as to the use for cross examination purposes or upon the direct case of the people of any prior criminal convictions and/or bad acts of the defendant at a trial of this action, and for disclosure of exculpatory material pursuant to federal and state case law, and for an order seeking dismissal of the accusatory instruments herein charging Stalking in the 4th degree in violation of §120.45(1) of the Penal Law and Harassment in the 2nd degree in violation of §240.26(1) of the Penal Law, for being defective upon their face, and for leave to submit any further motions necessitated by the relief obtained from this motion. The People have opposed said motion by an answering affirmation which was filed with the court and after due deliberation, the court determines the defendant's motion as follows:

The accusatory instruments herein which are labeled as informations state as to the factual allegations regarding incidents occurring on or about the 24th day of April, 2008 at 6:55 P.M. that the defendant did verbally threaten with physical harm a number of times. However, the accusatories upon their face do not list different times nor what the verbal threats were, even though the supporting depositions do supply information as to the threats, but do not allege different times.

§120.45 of the Penal Law of the State of New York states as follows:

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted;

The accusatory instrument to be valid upon its face within the provisions of CPL 100.40 would in addition to the requirements of the reasonable cause to believe that the defendant committed the offense charged in the accusatory instrument, would also have to establish by, “nonhearsay allegations of the factual part of the information and/or of any supporting depositions” every element of the offense charged and the defendant’s commission thereof.

An “information” (charging a misdemeanor or petty offense) must demonstrate “reasonable cause” and be legally sufficient for a prima facie case, a much more demanding standard than what is required for a felony complaint. *People vs. Alejandro*, 70 N.Y.2d 133 (1987).

§100.15 of the Criminal Procedure Law does require that, “ The factual part of such instrument must contain a statement of the complainant alleging facts of an evidentiary nature supporting or tending to support the charges.” Since the complainant police officer only alleges a conclusory statement as to what the defendant allegedly did and said without stating the actual words or the dates and times, the information would be jurisdictionally defective. *People v. Alejandro*, supra.

The procedural requirements for the factual portion of a local criminal court information are, simply: that it state "facts of an evidentiary character supporting or tending to support the charges" (CPL 100.15 [3]; *see*, CPL 100.40 [1] [a]); that the "allegations of the factual part ... together with those of any supporting depositions ... provide reasonable cause to believe that the defendant committed the offense charged" (CPL 100.40 [1] [b]); and that the "[n]on-hearsay

allegations [of the information and supporting depositions] establish, if true, every element of the offense charged and the defendant's commission thereof" (CPL 100.40 [1] [c]; *see*, CPL 100.15 [3]).

So long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading (*see*, *People v. Casey*, 95 N.Y. 2nd 354, 360; *People v Jacoby*, 304 NY 33, 38-40; *People v Knapp*, 152 Misc 368, 370, *affd* 242 App Div 811; *People v Shea*, 68 Misc 2d 271, 272; *see also*, *People v Allen*, 92 NY2d 378, 385; *People v Miles*, 64 NY2d 731, 732-733). The accusatory herein does not afford the defendant notice of the actual charges against him.

The *Alejandro* case actually involved a failure to satisfy the first requirement of CPL 100.40 (1) (c), in that there was a total absence of pleading of one of the elements of the crime of Resisting Arrest, i.e., that the defendant had resisted an "*authorized*" arrest (Penal Law §§ 205.30 [emphasis supplied]; *People v Alejandro*, *supra*, at 135-136). As noted in *People v. Casey*, *supra*, a defect as in the case at bar would be a jurisdictional non-waivable defect, as opposed to the issue as to whether the supporting deposition contains the proper non-hearsay testimony to support the charge. A defect in the supporting deposition, on the other hand, would not be jurisdictional. *People v. Casey*, *supra*.

The disputed issue is whether the accusatory demonstrates the requisite reasonable cause to

believe that a person has committed an offense, within the meaning of CPL 70.10(2). The

“reasonable cause” standard defined in CPL 70.10(2) and referenced in CPL 100.40(4)(b) is,

not coincidentally, also the statutory standard for determining whether a person was lawfully

arrested (see CPL 140.10[1]). The Appellate Division 4th Department noted in *Fitzpatrick v.*

Rosenthal, 29 A.D. 3rd 24; leave to appeal denied at 6 N.Y. 3rd 715 (May 11, 2006) that

reasonable cause is the equivalent of probable cause (see *People v. Maldonado*, 86 N.Y.2d 631,

635, 635 N.Y.S.2d 155, 658 N.E.2d 1028; *People v. Wharton*, 60 A.D.2d 291, 293, 400

N.Y.S.2d 840, *aff’d*, 46 N.Y.2d 924, 415 N.Y.S.2d 204, 388 N.E.2d 341, *cert. denied* 444 U.S.

880, 100 S.Ct. 169, 62 L.Ed.2d 110), the constitutional prerequisite for a lawful arrest. “The

constitutional standard for arrest is probable cause, defined in terms of facts and circumstances

‘sufficient to warrant a prudent [person] in believing that the (suspect) had committed or was

committing an offense’” (*Gerslein v.*

1. *Pugh*, 420 U.S. 103, 111, 95 S.Ct. 854, 43 L.Ed.2d 54, quoting

Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142).

The Court of Appeals has noted that Penal Law § 240.26(3) defines harassment in the

second degree as occurring when a party engages in a course of conduct, similar to the language

in the Stalking 4th degree offense. *People v. Valerio*, 60 N.Y. 2nd 669 (1983). As in the *Valerio*

case, the allegation herein in the accusatory instrument, constitutes proof of neither the course

of conduct nor the repeated commission of acts proscribed by the statute, since each accusatory

alleges only one act. *Peo. v. Valerio*, supra, at p. 670; *People v. Otto*, 40 N.Y. 2nd 864.

Since the accusatory does not state within the face of the information as to what the threat was and what the course of conduct consisted of, and the allegation is not supported in the supporting depositions

the accusatory instrument does not meet the requirements of *Alejandro, supra, Casey, supra,* and *Fitzpatrick, supra.*

Accordingly, the defendant's motion to dismiss the accusatory instrument charging Stalking in the 4th degree would be in all respects granted.

The accusatory alleging Harassment in the 2nd degree does appear to be sufficient upon its face, so that motion to dismiss would be in all respects denied.

The defendant's motion for police reports and arrest reports as listed in part VI of defendant's moving papers would be granted as to any exculpatory material, but any other pre-trial discovery would be denied. The People will be reminded to comply with the procedure outlined in the Criminal Procedure Law for disclosure of such materials at the time of trial.

The defendant's motion for relief pursuant to *People vs. Sandoval, supra,* and *People v. Ventimiglia, supra,* will be granted insofar as the People will be directed to serve upon the defendant and file with the court a list of all prior criminal convictions and/or bad acts of the defendant which they intend to use for cross examination purposes or upon their direct case at a trial of this action. Such list shall be served and filed by a date to be fixed by the court within

three days of trial. At such time, the court will determine which, if any, of said list may be used for such purposes at the trial of this action. Pending said in camera ruling, said motion would be in all other respects denied.

Paragraph 1 of the defendant's motion papers would be in all respects granted.

Paragraph 2(a) of the defendant's motion would be denied since there is no showing of materiality or necessity for supplying said items to the defense.

Paragraph 2(b) of the defendant's demands would be granted as to any exculpatory evidence, but would be denied in all other respects.

Part IV of defendant's moving papers requesting disclosure of exculpatory material will be in all respects granted, the People having recognized their continuing duty to disclose any such exculpatory material to the defense.

The defendant's motion for discovery and inspection will be denied subject to any motion directed toward the People's discovery response to the defendant's demand filed herein.

The defendant's motion to reserve the right to submit any further motions necessitated by the relief obtained from this motion would be granted pursuant to the provisions of section

255.20 (3) of the Criminal Procedure Law, but in all other respects will be denied.

The defendant's motion is granted as above stated, but in all other respects will be denied

This will constitute the decision and the order of the court.

ENTER:

Daniel C. Wilson,

Rome City Court Judge

DATE: August 7, 2008