

<b>People v Garlinghouse</b>
2009 NY Slip Op 30424(U)
February 26, 2009
Rome City Ct, Oneida County
Docket Number: 45129
Judge: Daniel C. Wilson
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STATE OF NEW YORK

COUNTY OF ONEIDA

ROME CITY COURT

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THE PEOPLE OF THE STATE OF NEW YORK,

MEMORANDUM DECISION

vs.

Matthew J. Garlinghouse,

Defendant.

DOCKET NO. 45129

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Patrick F. Scully, 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 February 5, 2009 and which was duly submitted to the court for decision on February 24, 2009 for an order seeking discovery and inspection of certain listed items, and for the filing of a bill of particulars herein, and for relief pursuant to *People vs. Sandoval* , 34 NY 2d 371 (1974) ) and *People v. Ventimiglia*,\_52 N.Y. 2<sup>nd</sup> 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 instrument herein charging Unauthorized Use of a Vehicle in the 3<sup>rd</sup> degree in violation of §165.05(1) of the Penal Law, for being defective upon its 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 statute defining the offense in the accusatory instrument reads as follows:

**§ 165.05 Unauthorized use of a vehicle in the third degree**

A person is guilty of unauthorized use of a vehicle in the third degree when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent

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 v. Alejandro*, supra. The accusatory instrument alleges in the factual portion that:

On Sunday September 28, 2008 at about 6:30 PM the above named defendant, Matthew J. Garlinghouse, did unlawfully and knowingly take a vehicle belonging to the victim, Christopher M. Colgan, without permission from the owner. The vehicle taken was a 1995 Chevy bearing NY REG: 56203JC. The vehicle was taken from the rear of 911 Highland Ave, in the City of Rome, County of Oneida, State of New York.

In order for an information or a count thereof to be sufficient on its face, every element

of the offense charged and the defendant's commission thereof must be supported by non-hearsay allegations of such information and/or any supporting depositions. §§ 100.15 and 100.40 Criminal Procedure Law.

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." The accusatory does allege all the elements of the offense upon its face. *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. 2<sup>nd</sup> 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 *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 such as that 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*.

"Significantly, defendant's knowledge that property is stolen may be proven circumstantially, and the unexplained or falsely explained recent exclusive possession of the fruits of a crime allows a jury to draw a permissible inference that defendant knew the property was stolen \* \* \* " (*People v. Landfair*, 191 A.D.2d 825, 826, 594 N.Y.S.2d 893, *lv. denied* 81 N.Y.2d 1015, 600 N.Y.S.2d 203, 616 N.E.2d 860 [citations omitted] ). With the evidence here buttressed by the statutory presumption that a person who rides in a vehicle without the consent

of the owner is presumed to know that he or she does not have such consent (Penal Law § 165.05[1] ), the papers would appear to be valid upon their face to establish the element of knowledge upon the part of the defendant. *Peo. v. Jackson*, 282 A.D. 2<sup>nd</sup> 830 (3<sup>rd</sup> Dept., 2001); leave to appeal denied 96 N.Y. 2<sup>nd</sup> 902.

Therefore, the Court finds that the allegations in the accusatory instrument as above would be sufficient upon their face. Accordingly, the defendant's motion to dismiss would be denied with leave to renew at the time of trial as to the sufficiency of the evidence at trial.

The defendant's motion for discovery and inspection is granted as to paragraph 1 of the defendant's moving papers.

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

Paragraph 2(b) of defendant's moving papers would be in all respects granted.

The defendant's motion for police reports and arrest reports as listed in part VII 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.

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: February 26, 2009