

People v Gardner

2010 NY Slip Op 30727(U)

April 2, 2010

Rome City Court

Docket Number: 47609

Judge: Daniel C. Wilson

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

State of New York
County of Oneida

Rome City Court

People of the State of New York

vs.

MEMORANDUM DECISION

Lance C. Gardner,
Defendant.

DOCKET NO. 47609

No appearance by 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 January 28, 2010 and which was duly submitted to the court for decision on October 5, 2010 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. 2nd 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 Resisting Arrest in violation of §205.30 of the Penal Law, Harassment in the 2nd degree, and Disorderly Conduct in violation of §240.20(3) 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 not opposed said motion either orally or in writing, and after due deliberation, the court determines the defendant's motion as follows:

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.

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

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

The accusatory instrument charging Disorderly Conduct in violation of §240.20(3) of the

Penal Law herein which is labeled as an information states as to the factual allegation regarding incidents occurring at the same time and date as above as follows:

“On November 19th, 2009, at approximately 2:10 A.M. the defendant Lance C. Gardner, did intentionally and unlawfully cause a public inconvenience, annoyance or alarm by repeatedly using obscene language. The defendant continued to loudly yell and use obscene language, yelling words such as “fuck and bullshit”, after I gave Gardner several lawful orders to stop swearing. Gardner walked away from the incident in an easterly direction in the 600 block of E. Dominick St. And returned momentarily and began yelling and swearing again after he was given another lawful order to stop swearing. The incident took place while the defendant was standing in the parking lot of The Mill, located at 611 E. Dominick St., in the City of Rome, County of Oneida. Gardner’s actions caused patrons of The Mill and Lupia’s Bar to gather. “

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, 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).

The accusatory charging Disorderly Conduct satisfies all of these standards.

Accordingly, the defendant’s motion to dismiss the charge of Disorderly Conduct for the papers being defective upon their face would be in all respects denied.

The accusatory instrument herein which is labeled as an information states as to the factual allegation regarding the charge of Resisting Arrest occurring on or about the 19th day of November, 2009 at about 2:10 A.M.. As follows:

On Thursday, November 19, 2009 at approximately 2:10 A.M. while outside 611 E. Dominick St., in the City of Rome, County of Oneida, State of New York, the defendant, Lance C. Gardner, did intentionally and unlawfully attempt to prevent your complainant from effecting an authorized arrest of himself by refusing to put his arms behind his back and grabbing onto your complainant's right thumb and bending it backwards, preventing your complainant from placing the handcuff on his left wrist, after he was told several times by your complainant and other assisting Officers to stop resisting.

The Penal Law defines resisting arrest as intentionally preventing or attempting to prevent a police officer "from effecting an *authorized arrest*" §205.30 P.L. It is an essential element of the crime of resisting arrest that the arrest be authorized and, absent proof that the arresting officer had a warrant or probable cause to arrest defendant for commission of some offense, a conviction cannot stand *People v. Alejandro*, supra at p. 135; *People v Peacock*, 68 NY2d 675; *People v Carneglia*, 63 AD2d 734; *People v Harewood*, 63 AD2d 876). Thus, to comply with the statute, the factual part of the information for resisting arrest must contain "non-hearsay allegations which would establish, if true" (CPL 100.40 [1] [c]) that the underlying arrest was authorized. The accusatory instrument herein only states that the defendant was subject to an authorized arrest, but fails to allege non-hearsay facts to establish that the arrest was authorized thereby rendering the accusatory jurisdictionally defective. *People v. Alejandro*, supra.

Accordingly, the defendant's motion to dismiss the charge of Resisting Arrest for the papers being defective upon their face would be in all respects granted.

Harassment in the 2nd degree in violation of §240.26(2) of the Penal Law reads as

follows:

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

2. He or she follows a person in or about a public place or places; or

The accusatory instrument herein which is labeled as an information states as to the factual allegation regarding the charge of Harassment in the 2nd degree occurring on or about the 19th day of November, 2009 at about 2:10 A.M.. As follows:

On November 19, 2009 at approximately 2:10 A.M. the defendant, Lance C. Gardner was involved in a dispute inside The Mill, located at 611 E. Dominick St., in the City of Rome, County of Oneida, State of New York. During the investigation into said incident the defendant was being placed under arrest for disorderly conduct. While I attempted to take Gardner into custody by placing my handcuff on his left wrist, Gardner intentionally grabbed onto my right thumb and bent it backwards causing me pain and my right thumb to swell.

In order for a criminal information to be jurisdictionally effective, it must "contain a statement of the complainant alleging facts of an evidentiary character supporting or tending to support the charges."

1. CPL 100.15(3). Such a statement is a "non-waivable jurisdictional predicate to a valid criminal prosecution". People v. Miles, 64 N.Y.2d 731, 732, 485 N.Y.S.2d 747, 475 N.E.2d 118; See also, People v. Hall, 48 N.Y.2d 927, 928, 425 N.Y.S.2d 56, 401 N.E.2d 179; People v. Case, 42 N.Y.2d 98, 99, 396 N.Y.S.2d 841, 365 N.E.2d 872; CPL 100.40(1); People v. Malausky, 127 Misc.2d 84, 485 N.Y.S.2d 925 (1985)

Do the recited facts support the charge that the defendant followed the complainant in a public place with the intent of harassing or alarming him? Clearly they do not.

The factual allegations do not allege any following.

Accordingly, the defendant's motion to dismiss the charge of Harassment in the 2nd degree for the papers being defective upon their face would be in all respects granted.

The defendant's motion to reserve the right to submit any further motions necessitated by relief obtained from this motion would be granted pursuant to the provisions of section 255.01 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 would be denied.

This will constitute the Decision and the Order of the Court.

ENTER:

DANIEL C. WILSON

ROME CITY COURT JUDGE

DATED: April 2, 2010