

People v Crippen

2010 NY Slip Op 33402(U)

December 13, 2010

City Court of Rome, Oneida County

Docket Number: 49035

Judge: Daniel C. Wilson

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State of New York
County of Oneida

Rome City Court

People of the State of New York

vs.

MEMORANDUM DECISION

Jeffery E. Crippen, Jr.,

DOCKET NO. 49035

Defendant.

Joshua L. Bauer, Esq., Asst. District Attorney of Oneida County,
for the People

Rocco L. Versace, Esq., Attorney
for the Defendant

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

The defendant has moved this court by a motions which were filed with the court on September 2, October 19, and October 28, 2010, and which was duly submitted to the court for decision on October 13, 2010 for an order seeking dismissal of the charges herein for lack of jurisdiction, and for preclusion of alleged statements herein for failure to comply with §710.30 of the Criminal Procedure Law, and for dismissal for failure to disclose exculpatory material pursuant to federal and state case law and in the interest of justice, and for leave to submit any further motions necessitated by the relief obtained from this motion. The People have opposed said the jurisdiction motion by an answering affirmation which was filed with the court, but have not opposed the other motions either orally or in writing, and after due deliberation, the court determines the defendant's motion as follows:

The defendant contends that the accusatory does not establish geographical jurisdiction by alleging that the offense occurred “while traveling in a private vehicle

§20.40(g) of the Criminal Procedure Law provides as follows:

A person may be convicted in an appropriate criminal court of a particular county, of an offense of which the criminal courts of this state have jurisdiction pursuant to

1. **section 20.20**, committed either by his own conduct or by the conduct of another for which he is legally accountable pursuant to **section 20.00 of the penal law**, when:

(g) An offense committed in a private vehicle during a trip thereof extending through more than one county may be prosecuted in any county through which such vehicle passed in the course of such trip.

Moreover, §20.50(1) of the Criminal Procedure Law makes that provision applicable to this matter by providing as follows:

1. The principles prescribed in

1. **section 20.40**, governing geographical jurisdiction over offenses as between counties of this state, are, where appropriate, applicable to the determination of geographical jurisdiction over offenses as between cities, towns and villages within a particular county unless a different determination is required by the provisions of some other express provision of statute.

Accordingly, the defendant’s motion to dismiss for lack of jurisdiction would be in all respects denied.

The People have not disputed the defendant’s contention that the notice pursuant to §710.30 of the Criminal Procedure Law was served beyond the statutory time period without an application for late notice, so that the court will accept that as being the factual situation.

§710.30(2) of the Criminal Procedure Law of the State of New York provides as to notice of admissions as follows:

2. Such notice must be served within fifteen days after arraignment and before trial, and upon such service the defendant must be accorded reasonable opportunity to move before trial, pursuant to subdivision one of section 710.40, to suppress the specified evidence. For good cause shown, however, the court may permit the people to serve such notice, thereafter and in such case it must accord the defendant reasonable opportunity thereafter to make a suppression motion.

The language which triggers the People's opportunity to serve a late notice--"[f]or good cause shown * * the court may permit the people to serve such notice"--was unaffected by the 1976 amendment and thus remains an "unqualifie[d] command" that the court may permit service of an untimely notice "only upon a showing of good cause" (*People v Briggs*, 38 N.Y. 2nd 319, 323). Such a showing is, therefore, indispensable. Only if that threshold is crossed may the court move on to considerations of prejudice to the defendant, and only then because the existence of prejudice may preclude granting the relief sought by the People, notwithstanding their showing of good cause (see, *People v. O'Doherty*, 70 N.Y. 2nd 479, 487; *People v Briggs*, supra, at 323; see also, *People v Wright*, 127 Misc 2d 885, 892; cf., *People v Basilicato*, 64 NY2d 103, 117 [construing CPL 700.70]).

The *O'Doherty* case, however, did not overturn prior decisions of the Court of Appeals which allowed "actual notice" as being the basis for good cause for such late notice. *People v. Michel*, 56 N.Y. 2nd 1014 (1982).

Accordingly, since the People have not applied for permission to serve late notice of the

purported admissions, the People will be precluded from use of the admissions unless there is a request for late notice granted by the court or if the defendant “opens the door” to the admission of the statements.

The People also have not disputed the allegation of a failure to provide exculpatory evidence to the defense.

The concept of fairness embodied in the Due Process Clauses of the State and Federal Constitutions imposes upon the prosecution a duty to apprise the defense of evidence favorable to the accused . *People v. Novoa* , 70 N.Y. 2nd 490 (1987);

1. (*People v Cwikla*, 46 NY2d 434, 441; *Brady v Maryland*, 373 US 83). To give substance to this constitutional right, it is incumbent upon the prosecutor, who speaks for the government, to ensure that material evidence which is in its possession and is exculpatory in nature is turned over to the defendant (*People v Cwikla*, 46 NY2d 434, 441, *supra*; *see, Giglio v United States*, 405 US 150, 153-154). This duty of candor and disclosure is no less applicable when the evidence is relevant only to the issue of credibility (*People v Cwikla*, 46 NY2d 434, 441, *supra*; *see, People v Savvides*, 1 NY2d 554, 557).

2.

Accordingly, the People would have an obligation to supply the exculpatory evidence to the defendant, but the motion to dismiss would be denied with leave to renew at the time of trial.

3.

As to the defendant’s motion to dismiss in the furtherance of justice, the court has

considered the factors listed in § 170.40 both individually and collectively and has determined that the granting of such a motion would not be appropriate. Accordingly, said motion would be in all respects denied with leave to renew if the exculpatory evidence is not supplied prior to the trial date.

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 and in accordance with the decision above, 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

DATED: December 13, 2010