

**People v Buck**

2011 NY Slip Op 30714(U)

March 27, 2011

Rome City Ct

Docket Number: 49839

Judge: Daniel C. Wilson

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State of New York  
County of Oneida

Rome City Court

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People of the State of New York

vs.

MEMORANDUM DECISION

Steven J. Buck,  
Defendant.

DOCKET NO. 49839

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Steven P. Feiner, Esq., Asst. District Attorney of Oneida County,  
for the People

Frank Mellace, II, 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 7, 2011 and which was duly submitted to the court for decision on January 31, 2011 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. 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 instruments herein for being defective upon their face pursuant to §170.35(1)(a) of the Criminal Procedure Law, 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 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 and for prior statements of witnesses as listed in part V 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 a list of persons interviewed by law enforcement personnel as listed in part IV of defendant's moving papers would be granted as to any exculpatory material, but in all other respects will be denied. Part 6 of defendant's moving papers requesting a list of witnesses would be in all respects granted.

Parts VII and VIII of defendant's moving papers requesting disclosure of exculpatory material will be in all respects granted.

As to the motion to dismiss the accusatory instrument charging Criminal Contempt in the 2<sup>nd</sup> degree, the defendant contends that no copy of the order of the Hon. Ralph J. Eannace, Utica City Court Judge, is attached to the document.

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).

§215.50(3) of the Penal Law of the State of New York reads as follows:

A person is guilty of criminal contempt in the second degree when he engages in any of the following conduct:

3. Intentional disobedience or resistance to the lawful process or other mandate of a court except in cases involving or growing out of labor disputes as defined by subdivision two of section seven hundred fifty-three-a of the judiciary law;

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 have been jurisdictional. *People v. Casey*, *supra*

It does appear that in the accusatory that the supporting depositions do not establish that the defendant had notice of the order of protection, nor does it establish that Judge Eannace issued an order. The accusatory charging Criminal Contempt in the 2<sup>nd</sup> degree would therefore not be valid upon its face.

Accordingly, the defendant's motion to dismiss the charge of Criminal Contempt in the 2<sup>nd</sup> degree for the papers being defective upon their face would be in all respects granted

The defendant has also moved to dismiss the charge of Criminal Mischief in the 4<sup>th</sup> degree based upon the fact that the alleged damaged property appeared to be marital property. Following a 2<sup>nd</sup> Department decision to that effect in 1997 ( *People v. Person*, 239 A.D. 2<sup>nd</sup> 612), the legislature amended the law to define "property of another" in §145.13 of the Penal Law as follows:

“ ‘Property of another’ shall include property jointly or co-owned by another person. It shall be no defense that one believes that he or she has a reasonable ground or right to damage such property because he or she owns such property along with another person unless such other person has given his or her consent to damage such property.”

It would appear then that the accusatory would be sufficient upon its face. Accordingly, the defendant’s motion to dismiss for the papers charging Criminal Mischief in the 4<sup>th</sup> Degree for being defective upon its face would be in all respects denied.

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

DATED: March 27, 2011