

**People v Rudd**

2011 NY Slip Op 31121(U)

May 2, 2011

Rome City Court, Oneida County

Docket Number: 49856/2011

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

Thurston Rudd,  
Defendant.

DOCKET NOS.  
49856, 49857

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Steven P. Feiner, 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 January 20, 2011 and which was duly submitted to the court for decision on February 3, 2011 for an order seeking discovery and inspection of certain listed items, and for disclosure of exculpatory material pursuant to federal and state case law, 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 as to the use for cross examination purposes and 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 an order seeking dismissal of the accusatory instruments herein charging separate counts of Criminal Mischief in the 4<sup>th</sup> degree in violation of §145.00(1) of the Penal Law for being defective upon their face, and for suppression of an identification of the defendant upon the basis that the People have failed to give notice pursuant to §710.30 of the Criminal Procedure Law, and for suppression of oral or written statements of the defendant upon the basis that the People have failed to give notice pursuant to §710.30 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 discovery and inspection is granted with the consent of the People.

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 the direct case of the People 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.

As to the defendant's motion to dismiss the accusatory instruments herein, the defendant contends that there is no allegation as to ownership of the property by the witness. The witness Brandy Kreckie alleges that it was her "residence" without asserting specific ownership interest.

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.2nd 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). In the case at bar, every element is alleged, but the defendant contends that there is no assertion of ownership interest in the property. As noted in *People v. Casey*, supra, a defect as in the case at bar would be jurisdictional. *People v. Casey*, supra.

“Property is that of another person, for purposes of [Penal Law article 145], if anyone, other than the defendant, has a possessory or proprietary interest in such tangible property. Actual legal title need not

be in such other person' ” (Donnino, Practice Commentary, McKinney's Cons Laws of NY, Book 39, Penal Law

1. § 145.00). Here, one could infer that someone other than defendant had a proprietary or possessory interest in the property at issue. *People v. Cheatom*, 57 A. D. 3<sup>rd</sup> 1447 ( 4<sup>th</sup> Dept., 2008); leave denied at 12 N.Y. 3<sup>rd</sup> 782 (2009).

Therefore, the Court finds that the accusatory instruments charging Criminal Mischief in the 4<sup>th</sup> degree as above would be sufficient upon their face. Accordingly, the defendant's motion to dismiss the accusatories would be in all respects denied.

The defendant also moves to preclude certain statements since there was no notice pursuant to §710.30 of the Criminal Procedure Law.

CPL 710.30 is a notice statute intended to facilitate a defendant's opportunity to challenge before trial the voluntariness of statements made by him ( *see, People v. Lopez*, 84 N.Y.2nd 425 (1994);

*People v. O'Doherty*, 70 N.Y.2d 479, 484, 522 N.Y.S.2d 498, 517 N.E.2d 213; *People v. Greer*, 42 N.Y.2d 170, 179, 397 N.Y.S.2d 613, 366 N.E.2d 273; *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838, 204 N.E.2d 179), and the reliability of his identification by others ( *see, People v. Laing*, 79 N.Y.2d 166, 170, 581 N.Y.S.2d 149, 589 N.E.2d 372; *People v. White*, 73 N.Y.2d 468, 474, 541 N.Y.S.2d 749, 539 N.E.2d 577, *cert. denied* 493 U.S. 859, 110 S.Ct. 170, 107 L.Ed.2d 127; *cf., People v. Gissendanner*, 48 N.Y.2d 543, 552, 423 N.Y.S.2d 893, 399 N.E.2d 924).

Thus, the statute requires that whenever the People intend to offer evidence of defendant's statements to a public officer or testimony of observations of defendant, they must serve notice of such evidence on defendant within 15 days of arraignment and before trial. There are but two exceptions to these requirements: the 15-day time provision may be waived for good cause and the notice may be excused if the defendant has in fact moved for suppression ( *see, CPL 710.30*[2], [3] ).

Manifestly, a defendant cannot challenge that of which he lacks knowledge; thus the statute requires that the notice “[specify] the evidence intended to be offered” (

2. CPL 710.30[1]). No notice was served by the People in this case. The People are required to inform defendant of the time and place the oral or written statements were made and of the sum and substance of those statements ( *see, People v. Lopez, supra at p. 428; People v. Bennett, 56 N.Y.2d 837, 453 N.Y.S.2d 164, 438 N.E.2d 870; People v. Laporte, 184 A.D.2d 803, 804-805, 584 N.Y.S.2d 662, lv. denied 80 N.Y.2d 905, 588 N.Y.S.2d 831, 602 N.E.2d 239; People v. Holmes, 170 A.D.2d 534, 535, 566 N.Y.S.2d 93, lv. denied 77 N.Y.2d 961, 570 N.Y.S.2d 495, 573 N.E.2d 583*). Full copies of the statements need not be supplied but they must be described sufficiently so that the defendant can intelligently identify them.

However, the statements are not identified by either side, and the defendant has not made a suppression motion as to any statements. Furthermore, the People have not moved for application to serve late notice so that no issue is before the court at this time. *People v. O’Doherty, supra*.

The defendant also moves to preclude certain alleged identification since there was no notice pursuant to §710.30 of the Criminal Procedure Law. If there had been a motion by the defense as to the identification, the court would conduct a pre-Wade hearing to determine whether said identification procedure was merely confirmatory in nature. *People v. Rodriguez, 79 N.Y. 2<sup>nd</sup> 445 ( 1992)* . At the time of the hearing in accordance with the *Rodriguez* case, the People would have the burden of establishing that this was not a Wade situation. However, the defendant has not made a motion, and the People have not applied for late notice, so that no issue is before the court.

The defendant’s motion to reserve the right to submit any further motions necessitated by the from this motion would be granted pursuant to the provisions of section 255.20 (3) 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: May 2, 2011